Maciej Błotnicki

Criminal Law Protection of Money Against Counterfeiting

Maria Curie-Skłodowska University Press

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UMCS
WYDAWNICTWO

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Contents

List of major abbreviations

BGE – Bundesgerichthoffs Entwurfen
BGH – Bundesgerichthoff (Supreme Court of Germany)
BGHSt – Bundesgerichthoff Strafsachen
CzPKiNP – Czasopismo Prawa Karnego i Nauk Penalnych
Dz.U. – Polish Legislative Journal "Dziennik Ustaw"
GA – Goldtammer's Archiv für Strafrecht
Glos. – Glosa
GStW – Gesamte Strafrechtswissenschaft
IN – Ius Novum
JA – Juristische Arbeitsblätter
JdT – Jagdverteidiger
JR – Juristische Rundschau
JurA – Juristische Ausbildung
JuS – Juristische Schulung
JZ – Juristenzeitung
k.c. – Polish Civil Code
p.c. – Polish Penal Code
k.p.k. – Polish Code of Criminal Procedure
KSP – Krakowskie Studia Prawnicze
KZS – Krakowskie Zeszyty Sądowe
LG – Landgericht
MoP – Monitor Prawniczy
MPH – Monitor Prawa Handlowego
NJW – Neue Juristische Wochenschrift
NP – Nowe Państwo
NStZ – Neue Zeitschrift für Strafrecht
ObR – Obergericht
OLG – Obergericht
ONSA – Jurisprudence of the Supreme Administrative Court

OSA – Jurisprudence of the Courts of Appeal
OSN – Jurisprudence of the Supreme Court
OSNC – Jurisprudence of the Supreme Court. Civil Law Chamber
OSNKW – Jurisprudence of the Supreme Court. Criminal and Military Chamber
OSNwSK – Jurisprudence of the Supreme Court in Criminal Matters
OSNPG – Jurisprudence of the Supreme Court – file of the General Prosecutor's Office
OSP – Jurisprudence of the Polish Courts
OSPiKA – Jurisprudence of Polish Courts and Arbitration Commissions
OTK – Jurisprudence of the Constitutional Tribunal
Pal. – Palestra
PiP – Państwo i Prawo
PPG – Przegląd Prawa Gospodarczego
PPK – Przegląd Prawa Karnego
Prob. Praw. – Problemy Praworządności
Prok. i Pr. – Prokuratura i Prawo
Prok. i Pr.-wkł. – Prokuratura i Prawo – wkładka
PS – Przegląd Sądowy
RGReichsgerichthoff – Supreme Court of the German Reich
RGSt – Reichsgerichthoff Strafsachen (Jurisprudence of the Supreme Court of the German Reich in criminal matters)
RPE – Ruch Prawniczy i Ekonomiczny
RPEIS – Ruch Prawniczy. Ekonomiczny i Socjologiczny
CA – Court of Appeal
SI – Studia Iuridica
SIL – Studia Iuridica Lublinensia
SJZ – Schweizerische Juristenzeitung
SC – Supreme Court
SP – Studia Prawnicze
StV – Strafverteidiger
TK – Constitutional Tribunal
WPP – Wojskowe Studia Prawnicze
ZStR – Schweizerische Zeitschrift für Strafrecht
ZStW – Zeitschrift für gesamte Strafrechtswissenschaft

Introduction[1]

Money, as a *sui generis* object, by virtue of its special functions and application, has been the object of criminal attacks since prehistory. Its counterfeiting – although differently qualified throughout history – is one of the oldest crimes that has remained a constant threat to the financial system of the state. Departing from the presentation of the historical perspective, it is worth exposing the growing tendency to dematerialise traditional legal institutions. Against this background money is no exception. The development of this phenomenon is influenced by the progressive digitalization and globalization. However, the issue of money counterfeiting has not lost its relevance. On the contrary, this state creates new challenges for the legislator, the judiciary and law enforcement authorities to face.

The objective of the present work is to analyze the prohibited act stipulated in Art. 310 § 1 p.c.[2] in the scope of counterfeiting, alteration or removal of a sign of redemption from Polish or foreign money or a monetary token, which has been established as a legal tender but has not been put into circulation. The structure applied here by the legislator, although it has evolved over the years, is a well-known normative solution, functioning both in the Penal Code of 1932 (Art. 175 § 1 p.c.),[3] as well as the Penal Code of 1969 (Art. 227 § 1 p.c.).[4] This fact did not affect the intensification of interest in the legal and criminal protection of money against counterfeiting in the areas of law theory and dogmatics. With the exception of Jerzy Skorupka's study in the form of a commentary on prohibited acts included in Chap-

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[1] This publication includes the results of research carried out in the research project entitled "The Issue of Money Forgery in the Polish Criminal Code As Well As in the Comparative Law Approach" [Pol. "Zagadnienie fałszu pieniądza na gruncie polskiej ustawy karnej i w ujęciu prawnoporównawczym"] financed from the funds of the National Science Centre in Poland on the basis of decision No. UMO-2018/29/N-HS5/01091.

[2] The Act of 6 June 1997 – Penal Code (Journal of Laws of 1997, No. 88, item 553, as amended).

[3] Ordinance of the President of the Republic of Poland of 11 July 1932 – Penal Code (Journal of Laws of 1932, No. 60, item 571, as amended).

[4] The Act of 19 April 1969 – Penal Code (Journal of Laws of 1969, No. 13, item 94, as amended).

ter XXXVII of the Penal Code, there is no monograph devoted *strictly* to the issue of money fraud in the Polish literature on the subject. The deficit of considerations in this respect is surprising given both the long legislative tradition of the type of offence and the multifaceted nature of money, which affects a number of relationships under different branches of law.

The publication is mainly of a dogmatic nature. Basically, it is devoid of research theses and hypotheses, the previous formulation of which could assume a certain degree of a prioriism which is an undesirable phenomenon in legal analyses. Only the disclosure of detailed research problems prompted them to be posed. The basic research method is primarily based on the formal and dogmatic analysis of legal provisions concerning money and its protection under criminal law. Due to the fact that the core of the work consists of considerations devoted to the counterparts of Art. 310 of the Penal Code *in gremio* within the legal orders of the countries of continental Europe, the application of the comparative legal method seemed to be indispensable. It is worth noting that when analyzing the Polish normative structure, the comparison was limited to German-language literature, as the money counterfeiting was subjected to a detailed theoretical and dogmatic analysis there.

In order to give the Reader a study characterized, as far as possible, by a synthetic approach, not all side issues revealed during the analysis were resolved in detail in its content. The digressions on the less significant threads would only blur the argument concerning the essence of the criminal law protection of money against counterfeiting. Moreover, the subject literature listed in the bibliography is only a fraction available on the Polish and foreign markets, which considers money to be an object worth analyzing on the basis of the legal system. With this in mind, we abandoned the effort to recall all publications that relate to the subject of the work, especially when they only touch on it in a contributory manner. Where relevant, other people's views are reported, thus, avoiding quotation *in extenso*. On the other hand, we attempted to present the formulated conclusions in a laconic way.

The first chapter presents the models of criminal liability for crimes that we find in continental Europe, which are equivalent to the types located *in gremio* in Art. 310 of the Penal Code. This procedure allowed, on the one hand, to verify the Polish legislator's compliance with standards, and, on the other hand, to embed the Polish normative structure against the background of solutions functioning in practice. Taking into account the fact that the title crime raises many interpretative doubts, starting with the importance of money, the second chapter of the work presents an analysis of the features of the act defined in Art. 310 § 1 of the Penal Code. This analysis took the form of an approach consistent with the taxonomy of a prohibited act in force in the doctrine. The third chapter refers to penalties and selected directives for their severity, as prescribed for perpetrators of this type. Our analysis is concluded with a summary.

The present publication is the fruition of research activities carried out under the Department of Criminal Law and Criminology of the UMCS Faculty of Law and Administration. I would like to thank my Master – Prof. dr hab. Marek Kulik – who served me with constructive comments and kind criticism. What is more, as a scientific supervisor and mentor, he believed in me and that the work could be created.

I dedicate this book to my wife, whose support and care cannot be overestimated. Her efforts enabling the publication of this book deserve admiration and the highest praise. I would like to express my gratitude to my parents for their help at every stage so far.

CHAPTER I

Criminal Law Protection of Money – a Comparative Legal Perspective

1. Introductory remarks

The first chapter of the work will discuss the topic of comparative legal treatment of models of liability for crimes against the financial system. The analysis will be based on the normative solutions applied by European legislators. Their analysis appears to be indispensable taking into account their impact on the interpretation of the type pursuant to Art. 310 § 1 of the Penal Code, and as a consequence, prosecuting the perpetrator of a falsification of money. The adopted direction and scope of research, including also behaviours different from classic counterfeiting, is significant, both for the essence and the scope of responsibility for the title crimes. The approach to the distinguished groups of issues will also allow to decode the content scope of features of the type from Art. 310 § 1 of the Penal Code. In addition, the results of the legal and comparative analysis may enable a critical look at domestic solutions and constitute a summary to formulate conclusions for their change.

2. Comparative approach to liability and criminal law protection of money in continental Europe

§ 1. Introductory remarks

We interpreted normative regulations on offences against the trading of money and securities in other legal orders. We analyzed the criminal regulations of 44 countries of the European continent. We introduced the following distinction:

1) Slavic States and the Former Eastern Bloc (the Czech Republic, Slovakia, Hungary, Ukraine, Belarus, Russia, Lithuania, Latvia),

2) States of Roman legal culture and the Iberian Peninsula (Italy, San Marino, Belgium, the Netherlands, Luxembourg, France, Monaco, Andorra, Spain, Portugal),

3) States of Germanic legal culture (Germany, Austria, Switzerland, Liechtenstein),

4) Scandinavian and Baltic States (Denmark, Iceland, Norway, Sweden, Finland, Estonia),

5) Balkan States (Slovenia, Croatia, Bosnia and Herzegovina, Brčko District of Bosnia and Herzegovina, Kosovo, Serbia, Montenegro, Romania, Moldova, Bulgaria, North Macedonia, Albania), and

6) Mediterranean States (Greece, Cyprus, Malta, Turkey).

The adopted selection of states was motivated by the will to present of the widest spectrum of legal orders, where criminal liability for an attack on money functioning in circulation is provided. In addition, similarities and differences were sought in countries close to and far from each other in tradition. The countries of the Anglo-Saxon system were excluded from the analyses due to the fact that this legal culture is largely distinct from the continental legal culture.

We indicated the source material constituting the object of analysis in each and every of the examined orders. Interpretation of the foreign legal text was possible after prior translation of their provisions into Polish, from the relevant official languages. The legal definitions adopted by the legislator and their significance in a given legal system have been all taken into account. The results of the translation processes may not always be perfect. This may result from dubious issues arising from foreign securities law or commercial law. Moreover, not all of the institutions presented in the work operate in our domestic legal order. In each case, attempts were made to convey the meaning and essence of solutions that have an impact in the respective countries.

§ 2. Review of the European legal orders

1. Slavic States and the Former Eastern Bloc

A. Czech Republic (Penal Code of 8 January 2009)[5]

The provisions that are relevant from the point of view of the subject matter are found in Part II – "Specific part", Part VI – "Economic offences", Chapter I – "Offences against currency and legal tender".

The Penal Code regulates four categories of offences that disrupt the smooth functioning and trading of currency and legal tender. The first includes the types

[5] Zákon ze dne 8. ledna 2009 trestní zákoník (source: https://www.zakonyprolidi.cz/cs/2009-40 [access: 1.01.2021]), hereinafter referred to as Cz.p.c.

of money counterfeiting (§ 233 sec. 2 of the Penal Code) and the counterfeiting of other legal tenders and securities (§ 234 sec. 3 of the Penal Code). There is also an additional regulation of unauthorized issuance of money (§ 237 sec. 1 sentence 1 of the Cz.p.c.). The second category consists of crimes that can be described as fencing counterfeit or processed money or parts of it (§ 233 sec. 1 of the Cz.p.c.) and other legal tenders (§ 234 sec. 2 of the Cz.p.c.). The third is the type of putting into circulation of money or its components intended to protect money against counterfeiting (§ 237 sec. 1 sentence 2 of the Cz.p.c.). The last type is a specific aid to the counterfeiting of money (§ 236 sec. 1 of the Cz.p.c.). Almost every act is subject to penalisation at the pre-completion stage, i.e. preparatory activities, and so are aggravated types.[6]

As part of the first category, it should be indicated that in accordance with § 233 sec. 2 of the Cz.p.c., the penalty[7] of imprisonment[8] from three to eight years is imposed on anyone who counterfeits or converts money with the intention of putting it into circulation as authentic or valid or as money of greater value, or who gives false or processed money for real or valid or for money of greater value. In turn, in § 233 sec. 3, and section 4, the aggravated types of the above offence are provided for. Circumstances implying a more severe reaction of criminal law, namely a penalty of five to ten years' imprisonment or confiscation of property,[9] include the commission of an act under § 233 sec. 2 of the Cz.p.c. by a member of an organized criminal

[6] The preparation is regulated in § 20 sections 1 and 2 of the Cz.p.c. It consists in deliberately creating the conditions for committing a particularly serious crime (§ 14 (3)), in particular in its organization, acquisition or adaptation of means or tools to commit it, in conspiracy, as part of an illegal assembly, in inciting or facilitating the commission of a crime. The criminalisation of preparatory activities is only accepted if the law expressly provides for it for a specific offence and no attempt or commission of a particularly serious offence has taken place. Unless otherwise provided for by law, the preparation shall be penalised in accordance with the sanctioning measure provided for by a provision typifying a particularly serious offence. In addition, § 20 sec. 3–5 of the Cz.p.c. list circumstances leading to the repeal of the criminal liability for preparatory activities based on the active repentance clause.

[7] The catalogue of penalties is included in § 52 sec. 1 of the Cz.p.c. The forms of imprisonment are indicated in § 52 sec. 2–3 Cz.p.c.

[8] A sentence of imprisonment, the execution of which has not been suspended for probation period, may in principle be imposed for up to twenty years (§ 55 sec. 1 of the Cz.p.c.). Exceptions concern the extraordinary penalty (§ 59 sec. 2 of the Cz.p.c.) and committing a crime as part of an organized criminal group (§ 108 sec. 1–2 of the Cz.p.c.). In such cases, it is possible to impose a penalty up to the upper statutory limit, further increased by one third. The upper limit of penalty shall not exceed 30 years.

[9] The confiscation of property and valuable objects is also provided for (§ 101 sec. 1 and 2 of the Cz.p.c.) and forfeiture of the property benefit (§ 102 of the Cz.p.c.). They constitute a *lex specialis* for the forfeiture of objects (§ 70 sec. 1 of the Cz.p.c.) or forfeiture of the property benefit (§ 71 sec. 1 of the Cz.p.c.).

group (§ 233 sec. 3 letter a of the Cz.p.c.), or when the act takes on a significant scale (§ 233 sec. 3 letter b of the Cz.p.c.). The sentence of imprisonment from eight to twelve years was provided for against the perpetrator of the act under § 233 sec. 2 of the Cz.p.c. being a member of an organized criminal group operating in several countries (§ 233 sec. 4 letter a of the Cz.p.c.), or when the crime was carried out on a large scale (§ 233 sec. 4 letter b of the Cz.p.c.).

Pursuant to § 234 sec. 3 of the Cz.p.c., a sentence of imprisonment of three to eight years shall be imposed on those who commit counterfeiting or falsification of legal tenders with the intention of using them as authentic or valid, or who use falsified or forged legal tenders as authentic or valid. In relation to this type, analogous circumstances were provided for qualifying the act and the penalty amounting to it, as in the case of § 233 of the Cz.p.c. This applies to the commission of an act in an organized criminal group (§ 234 sec. 4 letter a and sec. 5 letter a of the Cz.p.c.) as well as certain scale of the offence (§ 234 sec. 4 letter b and sec. 5 letter b of the Cz.p.c.).

Pursuant to § 237 sec. 1 sentence 1 of the Cz.p.c., whoever without permission produces money or components intended to protect it against counterfeiting, using equipment or materials used to produce money in accordance with the law, is subject to a prison sentence for a period of one to five years. Aggravated types are provided for, where the stricter penalty results from the characteristics of the type referring to activities in a criminal group (§ 237 sec. 2 letter a and section 3 letter a of the Cz.p.c.) or specific magnitude of the offence (§ 237 sec. 2 letter b and sec. 3 letter b of the Cz.p.c.).

Two issues deserve our special attention among this first category of offences. Firstly, each type provides for the criminalisation of preparatory activities (§ 233 sec. 5, § 234 sec. 6 and § 237 sec. 4 of the Cz.p.c.). Secondly, the Czech legislature included an interpretative directive that allows decoding the scope of criminal law protection in this chapter. Paragraph 238 of the Cz.p.c. provides that other than domestic money and legal tenders, domestic and foreign securities are also protected in accordance with § 233 to 237.

The second category includes the type of § 233 sec. 1 of the Cz.p.c. A person shall be liable to a term of imprisonment from one year to five years if they obtain, for another person, or store counterfeit or converted money or components of money which are intended to protect it against counterfeiting. Aggravated types of the said offence were also provided for, on analogous terms, both as regards the internal structure of modified types and sanctions, as in the case of § 233 sec. 2 of the Cz.p.c. Among the features the implementation of which gives rise to a stricter criminal law reaction one can mention the commission of a crime in an organized criminal group (§ 233 sec. 3 letter a and sec. 4 letter a of the Cz.p.c.) and reaching of certain scale by the crime (§ 233 sec. 3 letter b and sec. 4 letter b of the Cz.p.c.).

Pursuant to § 234 sec. 2 of the Cz.p.c., the penalty of imprisonment from one year to five years shall be imposed only on those who obtain, gain access to, receive or store

a counterfeit or processed legal tender for themselves or for another person. Under Czech legislation, legal tenders include a non-transferable payment card identified by name or number, electronic money, a transfer order, a traveller's cheque or a cheque guarantee card. This catalogue is not of an exclusive nature, as indicated by the use of the term "and in particular" in § 234 sec. 1 of the Cz.p.c. Similarly as on the basis of the type of § 233 sec. 2 of the Cz.p.c., aggravated types are also provided for. These include committing a crime within an organized criminal group (§ 234 sec. 3 letter a and sec. 4 letter a of the Cz.p.c.) or reaching certain sizes by this type (§ 234 sec. 3 letter b and sec. 4 letter b of the Cz.p.c.). Each of the types criminalizes, under penalty, the implementation of preparations (§ 233 sec. 5 and § 234 sec. 6 of the Cz.p.c.).

Putting into circulation money or components intended to protect money against counterfeiting belongs to the third category of type (§ 237 sec. 1 sentence 2 of the Cz.p.c.). It should be noted that anyone who obtains money or components intended to protect money against counterfeiting for themselves or for another person, or puts it into circulation or stores it, is punishable by imprisonment from one to five years.

Also in this case, there are aggravated types whose higher criminal liability is justified by participation in an organized criminal group (§ 237 sec. 2 letter a and sec. 3 letter a of the Cz.p.c.) or the achievement of certain scale by the crime (§ 237 sec. 2 letter b and sec. 3 letter b of the k.k.Cz.). In this case, the Czech legislator provided for the criminalisation of preparatory activities (§ 237 sec. 4 of the Cz.p.c.).

The last category includes the spontaneous type of prohibited act (§ 236 sec. 1 of the Cz.p.c.), which under the Polish Penal Code would most likely be considered a phenomenon of money counterfeiting – aiding and abetting. This provision criminalises, under pain of confiscation of property and valuables,[10] prohibition of conduct of business[11] or imprisonment of up to two years, the conduct of one who manufactures, sells, mediates or otherwise makes available or stores for themselves or anyone else devices, equipment or parts thereof, components intended to protect against counterfeiting, an instrument or any other means, including computer software, which has been designed or adapted to counterfeit or to process money

[10] Irrespective of the decision of forfeiture under § 70 sec. 1 of the Cz.p.c., it is also possible to order the forfeiture of files and equipment under § 103 sec. 2 and 3 Cz.p.c.

[11] Pursuant to § 73 sec. 1 of the Cz.p.c., the court may impose a ban on conducting business for a period from one year to ten years if the offender commited the offence in connection with this activity. A prohibition may be imposed when two conditions are met jointly. First, the criminal law must provide for this type of sanction under the statutory threat. Secondly, the court should come to the conclusion that due to the type and seriousness of the crime committed and the nature and circumstances of the offender, it is not necessary to impose another penalty (§ 73 sec. 2 of the Cz.p.c.). This form of punishment consists in prohibiting the offender to perform a specific job, profession or function or such activity that requires a special permit or the performance of which is limited by an act of law (§ 73 sec. 3 of the Cz.p.c.).

or legal tenders. In turn, in § 236 sec. 2 of the Cz.p.c. specifies the aggravated type, criminalizing the behaviour of the offender who committed the act under § 236 sec. 1 of the Cz.p.c. in connection with their profession/position held. This offence is punishable by a fine[12] or a period of imprisonment from one to five years.

B. Slovakia (Penal Code of 20 May 2005)[13]

From the point of view of the subject of work, attention should be paid to the provisions grouped in Part II – "Particular Part", Chapter IV – "Offences against property" and in Chapter VI – "Economic offences", Title III – "Currency and tax offences".

Under Slovak legislation, three categories of offences related to the regularity of money trading have been regulated.[14] The first includes types consisting in counterfeiting or altering money (§ 270 sec. 2 sentence 1 of the Sl.p.c.) and the counterfeiting of legal tenders other than money (§ 219 sec. 1 sentence 1 of the Sl.p.c.) and securities (§ 238 of the Sl.p.c.). The second category consists of the type of release into circulation of other legal tenders (§ 219 sec. 1 sentence 3 of the Sl.p.c.). The latter includes crimes consisting in the fencing of counterfeit or processed money (§ 270 sec. 1 of the Sl.p.c.),[15] securities (§ 271 sec. 1 of the Sl.p.c.) and other legal tenders (§ 219 sec. 1 sentence 2 of the Sl.p.c.). It is worth noting that within the framework of

[12] Pursuant to § 67 sec. 1 of the Cz.p.c., the court may impose a financial penalty if the offender has achieved or attempted to achieve for themselves or for another person a financial benefit from committing a crime. Notwithstanding the above condition, the court may order a fine only if the criminal law permits it. In relation to petty offences, the court may order a fine after taking into account the nature and seriousness of the offence committed and the nature and characterological features of the offender (§ 67 sec. 2 letter a and b of the Cz.p.c.).

[13] Zákon z 20. mája 2005 Trestný zakon (source: https://www.zakonypreludi.sk/zz/2005-300 [access: 1.12.2022]), hereinafter referred to as Sl.p.c.

[14] Pursuant to Section 5a of the Sl.p.c., the Penal Code is used to establish criminal liability for the offences of counterfeiting, illicit production of money and securities (§ 270 of the Sl.p.c.), extortion of counterfeit, fraudulently altered and illegally created money and securities (§ 271 of the Sl.p.c.), manufacture and possession of tools for counterfeiting and forgery (§ 272 of the Sl.p.c.), even if this act was committed outside the territory of the Slovak Republic by a foreigner who does not have a permanent residence in the territory of Slovakia. It was not provided for the application of the criminal law in the case of the implementation of similar causative actions against other legal tenders (§ 219 of the Sl.p.c.). In connection with the above, it should be assumed that the counterfeiting of a Slovak other legal tenders by a foreigner outside the borders of Slovakia will not result in liability under the analyzed criminal law.

[15] The type under § 271 of the Sl.p.c. is treated by the author as a variation of fencing of counterfeit or processed money, although a literal translation of the content of the Slovak Penal Code leaves a slight understatement in this respect (*uvádzania falšovaných, pozmenených a neoprávnene vyrobených peňazí acenných papierov*), which may suggest that trading in the aforementioned items is criminalised, cf. the content of § 5a of the Sl.p.c.

the Slovak Criminal Code, two intrinsic types of prohibited acts have been included, constituting a "specific preparation"[16] for the falsification of other legal tenders, their marketing or fencing (§ 219 sec. 2 of the Sl.p.c.) and preparation for counterfeiting of money or securities (§ 272 sec. 1 and 2 of the Sl.p.c.). With the exclusion of the offence included in § 271 sec. 1 of the Sl.p.c., each of the above-mentioned provides for its own modified types that are more severely punished.

As for the types from the first category, it should be noted that pursuant to § 270 sec. 2 sentence 1 of the Sl.p.c. whoever counterfeits, alters or illegally produces money or securities with the intention of using them as authentic or as money or securities with a higher denomination, is subject to criminal liability. The statutory sanction provides for a penalty[17] of seven to ten years' imprisonment.[18] Paragraph § 270 sections 3 and 4 of the Sl.p.c. list the aggravated types of counterfeiting money and its surrogates. A sentence of ten to fifteen years in prison is provided for an offender committing a crime under § 270 sec. 2 sentence 1 of the Sl.p.c., i.e. acting in a more serious manner (§ 270 sec. 3 letter a of the Sl.p.c.)[19] or on a significant scale (§ 270 sec. 3 letter b of the Sl.p.c.). Pursuant to § 270 sec. 4 of the Sl.p.c., the qualifying circumstances of the type include the commission of a crime of the basic type as a member of a dangerous group (§ 270 sec. 4 letter a of the Sl.p.c.)[20] or large

[16] Specific preparation, because within the framework of the Slovak criminal law, the implementation of this form of the prohibited act was clearly defined (§ 13 sec. 1 and 2 of the Sl.p.c.). Pursuant to § 13 sec. 1 of the Sl.p.c., preparation for the crime means deliberately organizing an act in the form of obtaining or adapting measures or tools to commit it, cooperation, grouping, inciting, concluding contracts or providing assistance in committing such a crime, or other deliberate actions aimed at creating conditions for its commission, if the crime was not attempted or committed. The above provision is complemented by § 13 sec. 2 of the Sl.p.c., where preparatory actions were threatened with a sanction provided for the respective crime. In addition, it also lists circumstances leading to the exclusion of the offender's criminal liability, corresponding to the active repentance clause (§ 13 sec. 3 letters a and b of the Sl.p.c.).

[17] The catalogue of penalties is included in § 32 items a–j of the Sl.p.c.

[18] Regulations regarding imprisonment should be sought in § 46 of the Sl.p.c. A custodial sentence may be of a timely nature, up to twenty-five years, or as a life sentence.

[19] "Acting in an aggravated way" is defined in § 138 of the Sl.p.c. Under that provision, the commission of an offence involving the use of arms, with the exception of the offences of first-degree homicide (§ 144), second-degree homicide (§ 145), homicide (§ 147 and § 148), homicide (§ 149), bodily injury (§ 155, 156 and 157 (letter a)); for a long period of time (letter b); in a violent and harassing manner (letter c); with the use of violence, the threat of violence or the threat of causing other serious harm (letter d); by breaking into the home (letter e); by deceit (letter f); by exploiting helplessness, inexperience, dependence or inexperience or subordination (letter g); by breaching an important legal obligation related to employment, position or function of the perpetrator (letter h); by an organised group (letter i); against several persons (letter j), is to be regarded as a more serious (aggravated) act.

[20] The definition of a "dangerous grouping" should be sought in § 141 of the Sl.p.c. It constitutes a blanket provision according to the content of which a dangerous group means a criminal

scale of criminal activity (§ 270 sec. 4 letter b Sl.p.c.). The aforementioned modified type was threatened with imprisonment from 12 to 20 years.

The argument regarding the counterfeit of money and securities should be extended to include the offense from § 272 of the Sl.p.c., which, under the Polish order, should generally be treated as a preparation for the counterfeiting of the aforementioned values. Pursuant to § 272 sec. 1 of the Sl.p.c., whoever produces, acquires for himself or someone else or has an instrument or other object or software suitable for counterfeiting or forging money, securities or their security features, is liable to a penalty of up to three years in prison. A qualifying characteristic of the type, implying criminal liability in the form of one to five years of imprisonment, is the modal circumstance of committing the prohibited act in connection with the exercise of a profession.

Under the first category, we must also analyze the type from § 219 sec. 1 sentence 1 of the Sl.p.c. Criminal liability applies to anyone who, for the purpose of use as authentic, illegally manufactures, counterfeits or converts legal tenders, electronic money or other payment card, including a telephone card or an object capable of performing such a function. Under the statutory penalty, a prison sentence of one to five years is foreseen. Two aggravated types are included. In the first case, committing an offence under § 219 sec. 1 sentence 1 of the Sl.p.c., acting in a more serious manner (§ 229 sec. 3 letter a of the Sl.p.c.), or on a significant scale (§ 219 sec. 3 letter b of the Sl.p.c.) or due to a special motivation (§ 219 sec. 3 letter c of the Sl.p.c.)[21] that were threatened with imprisonment for a term of two to eight years. In the second case, a more severe penalty is justified by the commission of a crime of the basic type, but on a large scale (§ 219 sec. 4 letter a of the Sl.p.c.) or as a member of a dangerous group (§ 219 sec. 4 letter b of the Sl.p.c.). A sentence of five to twelve years of prison is provided for the perpetrator of the aggravated type from section 4. Considerations devoted to the crime of counterfeiting legal tenders other than

group (§ 141 letter a of the Sl.p.c.) or a terrorist group (§ 141 letter b of the Sl.p.c.). The content of the blanket is filled in by decoding the standard by interpreting other provisions of the Act. Criminal group (§ 129 sec. 4 of the Sl.p.c.) means an organized criminal association consisting of at least three persons, existing for a certain time, acting in a coordinated manner in order to commit one or several crimes, the crime of money laundering under § 233 of the Sl.p.c., or any of the crimes related to corruption referred to in chapter VIII, Title III, in order to obtain, directly or indirectly, a financial or other benefits. On the other hand, a terrorist group (§ 129 sec. 5 of the Sl.p.c.) means an organized group consisting of at least three people, existing for a certain period of time, the purpose of which is to commit the crime of terror or a terrorist attack (as defined in § 419 of the Sl.p.c.).

[21] According to § 140 of the Sl.p.c., special motivation means that the crime was committed as a commissioned crime (letter a); out of a desire for revenge (letter b); with the intention of concealing or facilitating the commission of another crime (letter c); due to national, ethnic or racial hatred or hatred caused by the colour of the skin (letter d); or as a sexual offence (letter e).

money would be incomplete if we omitted the type described by § 219 sec. 2 of the Sl.p.c. It provides that a penalty of imprisonment of up to three years shall be imposed on a person who illegally manufactures, possesses, acquires for themselves or otherwise comes into possession or provides to another person a tool, computer program or other device specially adapted to commit the act under § 219 sec. 1 sentence 1 of the Sl.p.c. What comes to the fore when proceeding to the analysis of the second of the distinguished categories of offences, is the offence from § 270 sec. 2 sentence 2 of the Sl.p.c. Under this provision, anyone who uses counterfeit, altered or illegally produced money or securities as authentic is liable to imprisonment for a period from seven to ten years. The above regulation is supplemented by the type from § 219 sec. 1 sentence 3 of the Sl.p.c. A person who unlawfully uses or makes available to another person tender, electronic money or another payment card, including a telephone card or an object capable of performing such a function, for the purpose of using it as an authentic one, shall be liable to imprisonment from one year to five years. As in the case of aggravated types under § 270 sec. 3, and section 4 of the Sl.p.c., two modified types are provided. In the first case, the qualifying circumstances, the occurrence of which gives rise to the threat of imprisonment for a period from two to eight years, include acting in a more serious manner (§ 219 sec. 3 letter a of the Sl.p.c.) on a significant scale (§ 219 sec. 3 letter b of the Sl.p.c.) or due to a special motivation (§ 219 sec. 3 letter c of the Sl.p.c.). In the second case, the circumstances modifying the type are: large-scale implementation of the crime (§ 219 section 4 letter a of the Sl.p.c.) or as a member of a dangerous group (§ 219 sec. 4 letter b of the Sl.p.c.). The offence was punishable by five to twelve years' imprisonment. Within the third category, the fencing of the mentioned values was distinguished. Three types should be analysed: § 270 sec. 1 of the Sl.p.c., § 271 sec. 1 of the Sl.p.c. and § 219 sec. 1 sentence 2 of the Sl.p.c. The former characterises an offence punishable by a custodial sentence of between three and eight years by the conduct of the perpetrator of acquiring for himself or another person counterfeit, altered or illegally produced money or securities. Under the Slovak Penal Code, two aggravated types are provided for; they are punishable by imprisonment from ten to fifteen years (§ 270 sec. 3 of the Sl.p.c.) and a penalty of twelve to twenty years of imprisonment (§ 270 sec. 4 of the Sl.p.c.). The basis of the first aggravating circumstances is the classification of action as a more serious one (§ 270 sec. 3 letter a of the Sl.p.c.) or one performed on a significant scale (§ 270 sec. 3 letter b of the Sl.p.c.). In the second case, the characteristics modifying the type are: the implementation of the crime while being a member of a dangerous group (§ 270 sec. 4 letter a of the Sl.p.c.) or a large scale of the crime (§ 270 sec. 4 letter b of the Sl.p.c.). Another provision requiring analysis is § 271 of the Sl.p.c. According to its content, anyone who, with the intention of putting in into circulation, imports, exports, transports or receives counterfeit, processed or illegally produced money or securities, is sub-

ject to a prison sentence of seven to ten years. The last provision belonging to the third category is the offence under § 219 sec. 1 sentence 2 of the Sl.p.c. On the basis of this, a person who carries tender, electronic money or another payment card, including a telephone card, or an object capable of performing such a function, for the purpose of using it as authentic, shall be punished by imprisonment from one to five years. Also in this case, two aggravated types were provided for; threatened with imprisonment from two to eight years (§ 219 sec. 3 of the Sl.p.c.) and with a penalty of five to twelve years' imprisonment (§ 219 sec. 4 of the Sl.p.c.). In the first case, the characteristics implying a more severe penalty are: acting in a more serious way (§ 219 sec. 3 letter a of the Sl.p.c.) or on a significant scale (§ 219 sec. 3 letter b of the Sl.p.c.) or due to a special motivation (§ 219 sec. 3 letter c of the Sl.p.c.). Pursuant to § 219 sec. 4 of the Sl.p.c., these will be: implementation of a crime on a large scale (§ 219 sec. 4 letter a of the Sl.p.c.) or as a member of a dangerous group (§ 219 sec. 4 letter b of the Sl.p.c.).

For the correct interpretation of all typing regulations, we should take § 280 of the Sl.p.c. into account. Pursuant to the above provision of criminal law, certain values are protected, which can be grouped into four categories. The first includes money that has come out of circulation, but the competent state authorities are still obliged to exchange it for current money. The second is the money intended for circulation, which at the time of committing the act has not yet been issued. The third category includes currencies other than the Czech koruna, including the euro. The latter consists of foreign securities, including foreign wholesale bearer or transferable securities.

C. Hungary (Penal Code of 12 July 2002)[22]

We find interesting provisions, at least from the point of view of criminal law protection of money and its surrogates, in the Particular Part, Chapter XXXVIII – "Crimes related to currency counterfeiting and philatelic forgeries".

On the basis of the Hungarian legal order, three categories of crimes against the undisturbed circulation of money can be distinguished. The first consists of types consisting in counterfeiting, conversion or unauthorized issuance of currency (Art. 389 § 1 letter a of the H.p.c.) and its surrogates (Art. 392 § 1 letters a–c of the H.p.c.). Secondly, there are behaviours related to introduction of counterfeit money to circulation (Art. 389 § 1 letters b–c of the H.p.c.). The last one consists of types that criminalise obtaining materials or funds intended to counterfeit money or securities (Art. 390 § 1 of the H.p.c.) or other legal tenders (Art. 394 § 1 of the H.p.c.). In

[22] 2012. évi C. törvény a Büntető Törvénykönyvről (source: https://net.jogtar.hu/jogszabaly?docid=a1200100.tv [access: 1.12.2022]), hereinafter referred to as H.p.c.

addition, for the four types, the Hungarian legislature provided for an aggravated variant. In two cases, the implementation of preparatory activities is criminalised.

Within the first category, the analysis should start with the type of Art. 389 § 1 letter a of the H.p.c. A person who imitates or converts a currency in order to distribute it, is subject to criminal liability. The implementation of the constituent elements was threatened with a sanction[23] of two to eight years' imprisonment.[24] By typifying value forgery behaviour, the Hungarian legislator envisaged circumstances implying a stricter penalty. Counterfeiting in relation to a particularly large or larger amount of money was included in the aggravating elements (Art. 389 § 2 letter a of the H.p.c.)[25] or when the act was carried out as part of a criminal association[26] with accomplices (Art. 389 § 2 letter b of the H.p.c.).[27] Pursuant to Art. 389 § 3 of the

[23] The catalogue of penalties is included in Art. 33 § 1 of the H.p.c.

[24] Pursuant to Art. 34 of the H.p.c., the sentence of imprisonment is imposed for a definite period or as a life imprisonment. In turn, pursuant to Art. 36 § 1 sentence 1 of the H.p.c., the adjudged term of imprisonment is generally from three months to twenty years. Exceptions are provided for in Art. 36 § 1 sentence 2 of the H.p.c. and concern the commission of an act within a criminal organization, or if the perpetrator is a recidivist or a repeated recidivist and in cases of cumulative judgments or cumulative punishment. Those circumstances give rise to a term of imprisonment of up to 25 years.

[25] For the purposes of the H.p.c., a particularly significant value, damage or loss shall be construed as the equivalent of a sum of money between fifty million plus one and five hundred million forints (Art. 459 § 6 letter d of the H.p.c.). On the other hand, a "larger amount" is a value that exceeds the "particularly significant" value.

[26] Pursuant to Art. 459 § 1 sec. 2 of the H.p.c., a criminal association means two or more persons taking part in criminal activities in an organized manner or entering into an agreement for this purpose and attempting to commit a crime at least once, without forming a criminal organization. In order to interpret the qualifying constituent element of the type pursuant to Art. 389 § 2 letter b of the H.p.c., it is necessary to define a "criminal organization". To some extent, a criminal association is defined using a negative element. What exceeds the limits of complicity, but does not adopt the form of a criminal organization, is a criminal association. The "criminal organisation" means a group of three or more persons cooperating with each other on a long-term basis in order to intentionally commit, in an organised manner, criminal offences punishable by at least five years' imprisonment (Art. 459 § 1 sec. 1 of the H.p.c.).

[27] The term "perpetrator" means a perpetrator (single), a covert perpetrator and an accomplice (referred to as "parties to the crime"), as well as an instigator and a helper (collectively referred to as "cooperators") – Art. 12 of the H.p.c. The perpetrator is the person who actually committed the prohibited act (Art. 13 § 1 of the H.p.c.). A covert perpetrator is one who induces a person to commit a prohibited act, who cannot be held liable due to their minor age or insanity or due to coercion or misconception (Art. 13 § 2 of the H.p.c.). Those who consciously and voluntarily participate in a criminal act together with other persons, having full knowledge of the actions of each of them, are considered to be accomplices (Art. 13 § 3 of the H.p.c.). An instigator is one who deliberately induces to commit a crime (Art. 14 § 1 of the Penal Code), while the helper is the one who consciously and voluntarily helps in committing the crime (Art. 14 § 2 of the H.p.c.).

H.p.c., preparatory activities for the counterfeit of money are penalized.[28] According to this provision, whoever is involved in the preparation for currency counterfeiting is liable to a penalty of up to three years in prison.

It is worth pointing out that for the purposes of Chapter XXXVIII of the H.p.c., the legislator has defined or specified terms that are relevant for the interpretation of the types grouped in it. This applies to the element of the executive action. In order to ensure an adequate level of legal and criminal protection, the term "currency" covers banknotes and coins whose circulation is legally permitted or will be permitted under the provisions of law, European Union legislation or an official communication published by an institution with the privilege of issuing money. The attack may also target banknotes and coins withdrawn from circulation, where the issuing national bank is obliged or has agreed to redeem such currency and exchange it for legal tender in accordance with the relevant national or European Union regulations (Art. 389 § 5 letter a of the H.p.c.). The meaning of the constituent element in form of causative action was also clarified. It is worth pointing out that any changes in the currency that has been withdrawn from circulation that are aimed at creating the impression that it is still in circulation are treated as counterfeiting (Art. 389 § 5 letter c of the H.p.c.). The above extension should be supplemented with the issue that the creation or removal of a mark serving as an indication that the currency is valid only in a specific country or a reduction in the content of precious metal in a currency are also considered a forgery (Art. 389 § 5 letter d of the H.p.c.). Under certain conditions, the criminal law protection of currency and securities has been equalized. Pursuant to the contents of Art. 389 § 5 letter b of the H.p.c., printed securities issued as part of a series are treated as currency if the transfer of such securities is not limited or excluded by law or any annotation in the content of the document in question.

We also find supplementing of the regulations referring to the protection of currency and securities by means of criminal law in Art. 392 § 1 of the H.p.c., which provides for three types of causative action. A person who counterfeits a substitute payment instrument replacing cash, is punishable by imprisonment for up to two

Pursuant to Art. 14 § 3 of the H.p.c., the threat of punishment provided for against the parties to the crime applies to accomplices on equal terms.

[28] The form of inchoate crime is defined in Art. 11 § 1 of the H.p.c., the person who provides the means necessary to commit a prohibited act or facilitating its commission and who invites, volunteers or undertakes to commit a prohibited act or agrees to commit a prohibited act in consultation with other persons is liable to prosecution. The preparation is only criminalized if it is stipulated in the form of an explicit clause. An institution of active repentance was also provided for, i.e. the exclusion of the criminal responsibility for inchoate crime in the event of certain circumstances (Art. 11 § 2 letter a–c of the H.p.c.).

years (Art. 392 § 1 letter a of the H.p.c.)[29] or one, who produces a counterfeit substitute payment instrument replacing cash (Art. 392 § 1 letter b of the H.p.c.) or one, who using technical means, saves data or related securities stored on electronic payment instruments (Art. 392 § 1 letter c of the H.p.c.).[30] The code also criminalises preparatory actions for counterfeiting. Pursuant to Art. 392 § 3 of the H.p.c., any person who participates in the preparation for counterfeiting of cash substitute payment instruments, is subject to criminal liability. The above-mentioned type was threatened with imprisonment.[31]

It is also worth mentioning the adoption of a specific assumption by the Hungarian legislator. It is the equal treatment of money, securities and other legal tenders, irrespective of the issuer's country of issue or domicile. This uniformity of protection results from the disposition of Art. 389 § 6 of the H.p.c. and Art. 392 § 3 of the H.p.c. Foreign currencies and securities are covered by the same protection as the domestic currency. A similar solution was adopted for other legal tenders. Cash substitute payment instruments and electronic payment instruments issued in other countries shall enjoy the same protection as those issued in Hungary.

The second category of offences consists of the types grouped in Art. 389 § 1 letters b and c of the H.p.c., which criminalizes the introduction of false values to circulation. Any person who carries out one of the envisaged acts, is liable to imprisonment for two to eight years. The penalized behaviour may consist in obtaining a counterfeit or converted currency for its distribution, export, import of such currency or its transit through the territory of Hungary (Art. 389 § 1 letter b of the H.p.c.) or in the distribution of counterfeit or processed currency (Art. 389 § 1 letter c of the H.p.c.).

The last category consists of types constituting *sui generis* preparation for currency counterfeiting (Art. 390 § 1 of the H.p.c.) and other legal tenders (Art. 394 § 1 of the H.p.c.). Pursuant to Art. 390 § 1 H.p.c., it is punishable by imprisonment for

[29] In accordance with Art. 459 § 1 sec. 19 of the H.p.c., non-cash legal tenders and transferable credit tokens provided for in the Act on Credit Institutions, as well as treasury cards, traveller's cheques, credit tokens, which may be granted in accordance with the relevant provisions of law, subject to tax charged by the payer or exempt from tax, intended for the purchase of a limited range of goods or services, and bills of exchange, provided that they contain safeguards against duplication, fraudulent writing or counterfeiting and against unauthorized use, such as coding or signature.

[30] For the purposes of the code, non-cash legal tenders provided for in the Credit Institutions Act, treasury cards and electronic credit tokens issued in accordance with the Personal Income Tax Act should be considered as an electronic payment instrument, provided that they are used through an IT system (Art. 459 § 1 sec. 20 of the H.p.c.).

[31] The custodial sentence takes second place in the hierarchy of sanctions, from the point of view of their abstract degree of ailment and interference with the rights and freedoms of the convicted person. In accordance with Art. 46 § 2 of the H.p.c., the sentence takes place in a prison. Its minimum and maximum dimensions range from five to ninety days (Art. 46 § 1 of the H.p.c.).

up to two years, when, for the purpose of counterfeiting the currency, a person manufactures, supplies, receives, obtains, stores, exports or imports, or transits through the territory of Hungary, or distributes any materials, means, equipment, production plans, specifications or computer software intended for use. The aggravating constituent elements include that the crime was committed in a criminal association with accomplices or it took on a commercial scale (Art. 390 § 2 of the H.p.c.).[32] In this case, the type was threatened with imprisonment for up to three years.

Pursuant to the contents of Art. 394 § 1 of the H.p.c., a person who produces, supplies, receives, stores, exports or imports or transits through the country or distributes by technical means any materials, means, devices or computer programs designed to counterfeit cash substitute payment instruments or to store data stored on electronic payment instruments or related securities, shall be liable to imprisonment for up to one year. In the case of the aggravated type (Art. 394 § 2 of the H.p.c.), analogous modifying features were provided for, as in the case of an offense under Art. 390 § 2 of the H.p.c., except that the implementation of the crime was threatened with a sentence of up to two years' imprisonment.

D. Ukraine (Penal Code of Ukraine of 5 April 2001)[33]

Relevant provisions of law under the Ukrainian criminal law act should be sought in its Special Part, Chapter VII – "Crimes against economic activity".

Within the legal order of Ukraine, two categories of types of prohibited acts undermining the credibility of money or its substitutes in circulation should be distinguished. The first includes three types of crimes that consist in counterfeiting or processing money or securities issued by the government (Art. 199 sec. 1 sentence 1 of the U.p.c.) or another entity authorized to issue such securities (Art. 224 sec. 1 U.p.c.). Counterfeiting and unlawful issuance of electronic and other payment instruments are also subject to criminalisation (Art. 200 sec. 1 sentence 1 of the U.p.c.). The second category includes fencing-related crimes concerning currency and securities (Art. 199 sec. 1 sentence 2 of the U.p.c.) and other legal tenders (Art. 200 sec. 1 sentence 2 of the U.p.c.).

One of the crimes grouped in the first category is the type of Art. 199 sec. 1 sentence 1 of the U.p.c., according to its content,[34] a person who produces counterfeit

[32] Pursuant to Art. 459 § 1 sec. 28 of the H.p.c., an offence is considered to have been committed "on a commercial scale" if the perpetrator conducts criminal activities of the same or similar nature in order to generate profits on a regular basis.

[33] Кримінальний кодекс України (source: https://zakon.rada.gov.ua/laws/show/2341-14 [access: 1.12.2022]), hereinafter referred to as U.p.c.

[34] The catalogue of sanctions is included in Art. 51 items 1–12 of the U.p.c. The most important include: a fine (item 1), deprivation of the right to occupy certain positions or perform certain

Ukrainian or foreign currency in the form of banknotes or metal coins or government securities or their holographic security features is liable to imprisonment[35] for a period from three to seven years. Aggravated and meta-aggravated types are also provided. Modifying circumstances (Art. 199 sec. 2 of the U.p.c.) include situations when the act was committed again[36] or by a group of people after prior agreement[37] or when the offender's activity reached a large scale.[38] The occurrence of these signs justifies a stricter penalty, i.e. the threat of a sanction of five to ten years' imprisonment with confiscation of property.[39] The meta-aggravated type is included in Art. 199 sec. 3 of the U.p.c., with the sentence of imprisonment from eight to twelve years with confiscation of property that can be adjudged against whoever committed the

activities (item 3), confiscation of property (item 7), a term imprisonment (item 11) and a life imprisonment (item 12). Moreover, it should be mentioned that on the basis of the analyzed law, the sanction is divided into primary and additional (Art. 52 sec. 1 of the U.p.c.), still both the fine and the deprivation of the right to occupy certain positions or perform certain activities may be imposed as a primary or additional penalty (Art. 52 sec. 3 of the U.p.c.).

[35] Pursuant to Art. 63 sec. 1 of the U.p.c., imprisonment consists in isolating the convicted person and placing them in a closed penitentiary for a specified period. Unless a special provision provides otherwise, the said type of penalty shall be imposed within the limits of from one year to fifteen years.

[36] The repeated commission of an offence consists in committing two or more offences specified in the same article or paragraph of the article of the particular part of the Penal Code (Art. 32 sec. 1 of the U.p.c.). There is no recurrence when the perpetrator has been released from liability for a crime or the conviction has been overturned or the criminal record was already expunged or the convicted person has served a sentence for a crime (Art. 32 sec. 4 of the U.p.c.). Adoption of recurrence is also permissible in the case of committing two or more offences provided for in at least two different articles of the Code, if the law so provides (Art. 32 sec. 3 of the U.p.c.).

[37] Bearing in mind this modifying element, it is necessary to interpret it because the Ukrainian legislator uses similar terminology in the field of coincidental prosecution, complicity and more complex forms of criminal cooperation, which, as part of the interpretation, will lead to different reproductions of the content of the prohibiting norm. In accordance with Art. 28 sec. 1 of the U.p.c., an offence is considered to have been committed by a group of persons if several (two or more) perpetrators took part in it without prior entering into an agreement. An offence committed by a group of persons after the conclusion of an agreement takes place if it was committed jointly by several (two or more) persons who agreed to commit it jointly in advance, i.e. before its implementation (Art. 28 sec. 2 of the U.p.c.). Also the terms "organized criminal group" (Art. 28 sec. 3 of the U.p.c.) and "criminal organization" (Art. 28 sec. 4 of the U.p.c.) are defined. This will be discussed later with a meta-aggravated type of currency and securities counterfeit.

[38] A large-scale offence occurs if the nominal value of the imitation exceeds the taxable minimum income of a Ukrainian citizen by two hundred times or more.

[39] Confiscation of property constitutes an additional penalty (Art. 52 sec. 2 of the U.p.c.). It consists in the forced forfeiture, free of charge, of all or part of the convicted person's property. In the case of confiscation of part of the property, the court must indicate exactly what part will be forfeited or list the items to be confiscated (Art. 59 sec. 1 of the U.p.c.).

acts referred to in the first or second paragraph of the analyzed article as part of an organized criminal group[40] or on a particularly large scale.[41]

The offence defined under Art. 224 sec. 1 of the U.p.c. further supplements the criminal law protection of securities in Ukraine. Pursuant to this regulation, whoever, for the purpose of sale or further use, counterfeits non-governmental securities, is subject to criminal liability. For the implementation of elements of this type, an alternative sanction was provided in the form of a fine[42] from one thousand to four thousand non-taxable minimum incomes of a Ukrainian citizen or a penalty of up to three years of deprivation of the right to hold certain positions or perform certain activities.[43] Also in this case, aggravated and meta-aggravated types are provided for. As in the case of an offence under Art. 199 sec. 2 of the U.p.c., the aggravating elements include repeated commission of an offence or when the offender's activity has reached a large scale (Art. 224 sec. 2 of the U.p.c.).[44] As part of the statutory threat, the sanction is a fine of three thousand to ten thousand non-taxable minimum incomes of a citizen of Ukraine or a penalty depriving of the right to occupy certain positions or perform certain activities for a period of up to three years. As for the meta-aggravated type (Art. 224 sec. 3 of the U.p.c.), it is worth signaling that the

[40] On the basis of the meta-aggraveted type, committing an offence within an organised criminal group was considered as a modifying circumstance. In accordance with Art. 28 sec. 3 of the U.p.c., a crime is committed by an organized group if several persons (three or more) who were previously organized into a stable association in order to commit one or more (other) crimes, united in one plan with the division of functions of group members, whose objective is to achieve a plan known to all group members. The phrase "criminal organization" requires clarification (Art. 28 sec. 4 of the U.p.c.). A criminal organization is a stable, hierarchical association of several persons (five or more) whose members or structural groups, by prior agreement, have been organised for the direct commission of serious or particularly serious crimes by the members of that organisation, or for the management or coordination of illegal activities of other persons, or for ensuring the functioning of both the criminal organisation and other criminal groups.

[41] An offence committed on a particularly large scale will be considered to be the one in which the nominal value of the imitation is four hundred times higher than the non-taxable minimum income of a Ukrainian citizen.

[42] Pursuant to the contents of Art. 53 sec. 1 of the U.p.c., a fine is a pecuniary penalty imposed by the court in the cases and in the amount specified in the special part of the Code. The court determines the amount of the penalty depending on the seriousness of the offence and taking into account the financial situation of the offender in the range of thirty to fifty thousand non-taxable minimum incomes, unless a special provision provides otherwise (Art. 53 sec. 2 of the U.p.c.).

[43] Pursuant to Art. 55 sec. 1 of the U.p.c., the deprivation of the right to hold certain positions or perform certain activities may be imposed as a primary penalty for a period of two to five years. If the deprivation of right is an additional penalty, it is imposed for a period of one to three years. The exception is the so-called Act "On the sanation of power" (Про очищення влади), which provides for the possibility of deprivation of rights for five years (Art. 55 sec. 2 of the U.p.c.).

[44] A "large-scale" offence occurs when the nominal value of counterfeits exceeds three hundred times or more of the non-taxable minimum incomes of a Ukrainian citizen.

elements implying a more severe penalty are committing a crime on a particularly large scale[45] or within an organized criminal group.

The last crime belonging to the first category is the act under Art. 200 sec. 1 of the U.p.c. A fine of between three thousand and five thousand non-taxable minimum incomes of a citizen of Ukraine, is imposed for an act consisting in the unauthorized issuance of electronic money or forgery of transfer documents, payment cards or other means of access to bank accounts or electronic money.[46] The aggravating circumstance of the type is the repeated commission of a prohibited act or its implementation by a group of persons after the prior agreement. The fines range from five thousand to ten thousand non-taxable minimum incomes of a citizen of Ukraine.

The second of the distinguished categories of prohibited acts includes fencing-related behaviours. It is worth paying attention to the type of Art. 199 sec. 1 sentence 2 of the U.p.c., on the basis of the above provision, a person who stores, buys, transports, transmits, imports into the territory of Ukraine for sale illegally produced, obtained or counterfeit Ukrainian or foreign currency in the form of banknotes or metal coins or government securities or their holographic security features, shall be liable to imprisonment for three to seven years. In the scope of the crime in question, the Ukrainian legislator provided for both aggravated and meta-aggravated types. Pursuant to the contents of Art. 199 sec. 2 of the U.p.c., a sentence of imprisonment of five to ten years, together with the confiscation of property, is imposed on whoever commits the offence described in sec. 1 again or in a group of people after prior agreement or when the perpetrator's activity has reached a large scale. On the other hand, whoever commits the act under Art. 199 sec. 1 or sec. 2 of the U.p.c. within an organized criminal group or acting on a particularly large scale (Art. 199 sec. 3 of the U.p.c.), is liable to imprisonment from eight to twelve years, along with the confiscation of property.

The last type of offence is the offence described in Art. 200 sec. 1 sentence 2 of the U.p.c. It says that behaviour consisting in the purchase, storage, transport, forwarding for sale, as well as the use of falsified documents of transfers, payment cards or other means of access to bank accounts or electronic money is punishable by a fine in the amount of three thousand to five thousand non-taxable minimum incomes of a citizen of Ukraine. The features modifying the type are the repeated commission of a prohibited act or its implementation by a group of people after prior agreement (Art.

[45] An aggravating element for "particularly large scale" of criminal activity means that the amount of counterfeiting exceeds a thousand times or more of the non-taxable minimum incomes of a Ukrainian citizen.

[46] A transfer document should be understood as a paper or electronic document used by banks or their customers to transmit orders or information about the transfer of funds between transfer entities (settlement documents, documents for cash transfer, during the execution of an interbank transfer and a payment message).

200 sec. 2 of the U.p.c.). In this case, the act is sanctioned under the threat of a fine of five thousand to ten thousand non-taxable minimum incomes of a citizen of Ukraine.

E. Belarus (Penal Code of the Republic of Belarus of 9 July 1999)[47]

Typification provisions should be sought in the Particular Part, Section VIII – "Crimes against property and economic activity", Chapter 25 – "Crimes against the economic order".

We can distinguish three categories of crimes that affect the monetary order in Belarus and the trading of money. The first includes the types of counterfeiting money and securities (Art. 221 sec. 1 sentence 1 of the B.p.c. and Art. 226-2 sec. 1 of the B.p.c.) and the counterfeiting of other legal tenders (Art. 222 sec. 1 sentence 1 of the B.p.c.). The second category includes the circulation of counterfeit or altered money or security (Art. 221 sec. 1 sentence 3 of the B.p.c.) or its substitute (Art. 222 sec. 1 sentence 2 of the B.p.c.). The last one consists of peripheral crimes in relation to counterfeit money or securities (Art. 221 sec. 1 sentence 2 of the B.p.c.). Regardless of the category, each behaviour has its own aggravated types.

As part of the first category, it is worth pointing out Art. 221 sec. 1 sentence 1 of the B.p.c. According to this provision, the production of counterfeit official monetary units of the Republic of Belarus (domestic currency), foreign currency, government or other securities denominated in domestic currency or in foreign currency is punishable by a penalty[48] of two to five years' restriction of liberty,[49] two to seven years' imprisonment[50] with or without a fine.[51]

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[47] Уголовный Кодекс Республики Беларусь (source: https://kodeksy-by.com/ugolovnyj_kodeks_rb.htm [access: 1.12.2022]), hereinafter referred to as B.p.c.

[48] Penalties were divided into those of a primary or additional nature. The catalogue of primary penalties is included in Art. 48 sec. 1 items 1–11 of the B.p.c. In turn, the social work penalty, fine, deprivation of the right to occupy certain positions or perform certain activities may be used either as a primary penalty or as an additional penalty (Art. 48 sec. 2 of the B.p.c.).

[49] Pursuant to Art. 55 sec. 1 of the B.p.c., the restriction of freedom consists in imposing on the convicted person obligations limiting their freedom and placing them in conditions of supervision by the authorities and institutions responsible for executing the sentence. The said penalty shall be imposed for a period of six months to five years (Art. 55 sec. 2 of the B.p.c.).

[50] A prison sentence is generally imposed for a period of six months to twelve years (Art. 57 sec. 1 of the B.p.c.). This rule is subject to an exception when it comes to particularly serious crimes. In such a case, it is possible to impose a custodial sentence of up to twenty years. In the event of intentional offences against life, illicit trafficking in narcotic drugs, psychotropic substances or their precursors or analogues, or offences against the State, the sentence of imprisonment may not exceed twenty-five years.

[51] The fine constitutes a pecuniary penalty imposed by the court as part of the statutory threat of a penalty. Its amount is determined taking into account the amount of the base value determined on the date of the judgment, depending on the nature and degree of social threat of

The legislator of Belarus, constructing the crime of counterfeiting money or securities, provided for its aggravated types. Circumstances implying a stricter penalty include the repeated commission of a crime,[52] acting on a particularly large scale, or the implementation of an act within an organized criminal group (Art. 221 sec. 2 of the B.p.c.).[53] The occurrence of the aforementioned elements is associated with a cumulative criminal reaction in the form of a penalty of five to fifteen years of imprisonment and a fine.

Supplementing of the legal and criminal protection of securities and other legal tenders should be sought in Art. 222 sec. 1 sentence 1 of the B.p.c. This states that who produces fake plastic bank cards, chequebooks, cheques and other legal tenders other than securities for the purpose of sale is liable to a fine or a restriction of

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the crime committed and the material situation of the convicted person. It ranges from thirty to a thousand base values (Art. 50 sec. 2 of the B.p.c.). However, in the case of offences against the economic order, a fine of between three hundred and five thousand base units shall be imposed.

[52] Pursuant to the contents of Art. 41 sec. 1 of the B.p.c., the commission of two or more offences referred to in the same article of the special part is considered a repeated offence. In turn, the commission of two or more offences referred to in various articles of the Code may be considered repeated only if the law provides so (Art. 41 sec. 2 of the B.p.c.). Pursuant to Art. 41 sec. 3 of the B.p.c., there is no recurrence of offence when the perpetrator has been released from liability for a crime or the conviction has been overturned or the criminal record was already expunged.

[53] On the basis of the aggravating element, it is worth explaining several terms relevant for the interpretation of the type pursuant to Art. 221 sec. 2 of the B.p.c. The phrase "a crime committed by a group" requires our interpretation. Pursuant to Art. 17 sec. 1 of the B.p.c., an offence is considered to have been committed by a group of persons if at least two persons jointly participated in its commission as perpetrators (complicity). A crime committed by a group of people under a prior agreement is when the perpetrators have previously agreed to commit it jointly (Art. 17 sec. 2 of the B.p.c.). The essence of the aggravated type includes committing a crime within an organized criminal group. This is the case when it has been carried out by two or more people who have previously united in an easily manageable, stable group in order to conduct joint criminal activity (Art. 18 sec. 1 of the B.p.c.). In accordance with Art. 18 sec. 2 of the B.p.c., the organizers (leaders) of the group are responsible for all crimes committed by the group; its members are solely responsible for the acts in which they participated. The most formalised criminal structure is the criminal organisation. It consists of an association of organized groups or their organizers (leaders), and other participants in the development or implementation of measures to conduct criminal activities or create conditions for their maintenance and development (Art. 19 sec. 1 of the B.p.c.). A criminal offence is considered to have been committed by a criminal organisation if it was carried out by its member for the purpose of achieving its objectives or on the order of a criminal organisation by a person who is not a member of that organisation (Art. 19 sec. 3 of the B.p.c.). An institution of active repentance was also envisaged. A member of a criminal organization or a gang (other than the organizer or leader) who has voluntarily declared the existence of a criminal organization or gang and contributed to its disclosure, is exempt from criminal liability for participation in the criminal organization or gang and the crimes committed by them as a member of a criminal organization or gang. However, this does not apply to particularly serious or severe crimes related to the violation of human life or health (Art. 20 of the B.p.c.).

liberty from two to five years or a prison sentence from two to six years. The same act committed repeatedly or as part of the activities of an organized criminal group or on a particularly large scale is punishable by a penalty of three to ten years of imprisonment with the possibility of a cumulative fine (Art. 222 sec. 2 of the B.p.c.). What should be regarded as interesting is the offence described in Art. 222-6 sec. 2 of the B.p.c. This provision says that whoever forges a signature on a promissory note or on an allonge attached to it, signs a promissory note, including an indos, aval, acceptance or allonge on behalf of a non-existent entity, is subject to a fine, limitation of freedoms from two to five years or imprisonment from two to six years. Also this type has an aggravated type (Art. 222-6 sec. 4 of the B.p.c.). Modifying elements include committing a crime as part of the activity of an organized criminal group, using violence or repeated commission of a crime defined in section 2. Their occurrence implies the threat of a penalty of five to ten years of imprisonment with the possibility of a cumulative fine.

The second category includes acts involving the placing on the market of counterfeit money, a security or its surrogate, or behaviours closely related to the circulation of falsified values. It is worth paying attention to the content of Art. 221 sec. 1 sentence 3 of the B.p.c. It criminalises the sale of counterfeit official monetary units of the Republic of Belarus (i.e. the domestic currency), foreign currency, government or other securities denominated in domestic or foreign currency. Such conduct was prohibited under the penalty of two to five years of restriction of liberty or a two- to seven-year custodial sentence with the option of a cumulative fine. The aggravating elements are the commission of the crime on a particularly large scale or within an organized criminal group or the recurrent character of the crime (Art. 221 sec. 2 of the B.p.c.). The consequence of committing the analyzed act may include the imposition of a prison sentence of five to fifteen years. As part of the threat of sanction, a cumulative fine is provided for. The second offence in this category is that described by Art. 222 sec. 1 sentence 2 of the B.p.c. Who sells counterfeit plastic bank cards, chequebooks, cheques and other legal tenders other than securities is liable to a fine or restriction of liberty from two to five years or imprisonment from two to six years. The circumstances modifying the type include the repeated commission of a crime in the basic type, or on a particularly large scale or as part of the activity of an organized criminal group (Art. 222 sec. 2 of the B.p.c.). For the implementation of the offence, a penalty of three to ten years' imprisonment with the possibility of a cumulative fine was provided.

The last category of crimes of the legal order of Belarus consists of fencing-related behaviour connected with counterfeit currency and securities. On the basis of the type of Art. 221 sec. 1 sentence 2 of the B.p.c., the act consists in storing with the intention of selling fake official monetary units of the Republic of Belarus (domestic currency), foreign currency, government or other securities denominated in domes-

tic or foreign currency. That conduct was subjected to penalty of two to five years of restriction of liberty or a custodial sentence of two to seven years. In both cases, it is possible to impose a cumulative fine. Pursuant to Art. 221 sec. 2 of the B.p.c., the circumstances aggravating the type are: repeated commission of the crime, a particularly large scale of operations of perpetrator or their acting as part of the activities of an organized criminal group. The occurrence of aggravating elements implies the threat of a cumulative fine and imprisonment from five to fifteen years.

F. Russia (Penal Code of the Russian Federation of 24 May 1996)[54]

From the point of view of the subject of work, attention should be paid to the provisions grouped in the Particular Part, Part VIII – "Economic offences", Chapter 22 – "Offences from the sphere of economic activity".

We can distinguish three categories of behaviour on the basis of the Russian legal order. The first is the counterfeiting of money and securities (Art. 186 sec. 1 sentence 1 of the R.p.c.) and other legal tenders (Art. 187 sec. 1 of the R.p.c.). The second consists of crimes relating to fencing (Art. 186 sec. 1 sentence 2 of the R.p.c.). The last of the distinguished include behaviours that boil down to the circulation of counterfeited values (Art. 186 sec. 1 sentence 3 of the R.p.c.).

Attention should be paid to the type described in Art. 186 sec. 1 sentence 1 of the R.p.c. On the basis of this regulation, whoever produces counterfeit banknotes of the Central Bank of the Russian Federation, metal coins, state securities or other securities in the currency of the Russian Federation or in a foreign currency for the purpose of its circulation, is liable to penalty. The penalty provided for in the standardisation provision is the penalty[55] of up to five years of forced labour[56] or a penalty of imprisonment for up to eight years.[57] Regardless of the type of penalty imposed,

[54] Уголовный кодекс Российской Федерации (source: http://pravo.gov.ru/proxy/ips/?docbody&nd=102041891 [access: 1.12.2022]), hereinafter referred to as R.p.c.

[55] The catalogue of penalties is listed in Art. 44 letters a–m of the R.p.c. The most important criminal penalties include: a fine (letter a), deprivation of the right to hold certain offices or engage in certain activities (letter b), restriction of liberty (letter h), forced labour (letter h^1), a term of imprisonment (letter k), life imprisonment (letter l) and the death penalty (letter m). Penalties were divided into primary and additional (Art. 45 sec. 1 and 3 of the R.p.c.), except that, among others, the fine, depending on its function, belongs to both categories (Art. 45 sec. 2 of the R.p.c.).

[56] Pursuant to Art. 49 sec. 1 of the R.p.c., forced labour consists in the performance, by the convicted person, in their free time, unpaid socially useful work. The type of compulsory work and the facilities in which it is to be performed are determined by the local self-government bodies by a resolution with the consent of the executive criminal inspectorates. From 60 to 480 hours of compulsory work may be adjudged, with up to four hours per day (Art. 49 sec. 2 of the R.p.c.).

[57] The penalty of imprisonment consists in isolating the convicted person from society by sending them to a settlement, educational colony, medical and reformatory institution or to

it is possible to impose a cumulative fine of up to one million rubles or the amount of remuneration/other income of the perpetrator for a period of up to five years.[58]

The Russian Criminal Code also provides for an aggravated type (Art. 186 sec. 2 of the R.p.c.) and a meta-aggravated one (Art. 186 sec. 3 of the R.p.c.). The modifying element, in accordance with Art. 186 sec. 2 of the R.p.c. is the implementation of the act on a large scale.[59] In this case, the offender is liable to a penalty of up to twelve years' imprisonment with the possibility of a cumulative fine of up to one million rubles or the amount of the offender's remuneration/other income for a period of up to five years or a penalty of a restriction of liberty of up to one year.[60] If the offences under Art. 186 sec. 1 or sec. 2 of the R.p.c. were committed within an organized group, the perpetrator is liable to imprisonment for up to fifteen years (Art. 186

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a correctional colony of a general, strict or special nature or to a penal institution (Art. 56 sec. 1 sentence 1 of the R.p.c.). Pursuant to Art. 56 sec. 2 of the R.p.c., this penalty can be imposed for two months to twenty years. In the case of partial or total cumulation of custodial sentences, the maximum cumulative custodial sentence shall not exceed twenty-five years; in the case of cumulative penalty, thirty years' custodial sentence (Art. 56 sec. 4 of the R.p.c.). The manifestation of the *ultima ratio* directive of imprisonment can be found in Art. 56 sec. 1 sentence 2 of the R.p.c. A prison sentence may be imposed against the perpetrator who committed a minor offence for the first time only if there are aggravating circumstances provided for in Art. 63 of the R.p.c., with the exception of the offences provided for in part one of Art. 228, part one of Art. 231 and Art. 233 of the R.p.c. and only if the statutory provision provides for deprivation of liberty as the sole type of penalty.

[58] The fine is a fine imposed in the sum between five thousand and one million rubles or in the amount of the perpetrator's remuneration/other income for a period of two weeks to five years (Art. 46 sec. 1 and 2 of the R.p.c.). A fine of 500,000 rubles or a salary or earnings or other income of the perpetrator for a period of more than three years may be imposed only for serious and particularly serious crimes in the cases specified in the Act, except when the amount of the fine is estimated on the basis of a value that is multiple of the amount of the bribe. A fine estimated on the basis of the value being a multiple of the amount of the bribe is set at an amount up to one hundred times the amount of the bribe. However, it cannot be lower than twenty-five thousand rubles and higher than five hundred million rubles (Art. 46 sec. 2 of the R.p.c.). In accordance with Art. 46 sec. 3 R.p.c., the amount of the fine is determined by the court, depending on the seriousness of the crime committed and the financial status of the offender. In addition, the family conditions and the ability of the offender to receive a salary or other income (earning opportunities) are also taken into account.

[59] The aggravating element of a "large-scale" type of activity is a legally defined term. In interpreting the provisions of Chapter 22 of the R.p.c., with the exception of Art. 174, 174.1, 178, 185–185.6, 193, 194, 198, 199 and 199.1 large scale, serious damage, income or debt means a cost, damage, income or debt in the amount exceeding one million five hundred thousand rubles.

[60] The penalty of limitation of liberty is an alternative to imprisonment. If it is provided for under the statutory threat, it is imposed for a period of two months to five years for committing minor or less serious offences or in the event of committing a serious crime for the first time (Art. 53 sec. 1 and 4 of the R.p.c.).

sec. 3 of the R.p.c.).[61] In addition, the perpetrator can be sentenced to a fine of up to one million rubles or to the amount of the perpetrator's salary/other income for a period of up to five years or a penalty of restriction of freedom for up to two years. The second type included in this category is an offence defined in Art. 187 sec. 1 of the R.p.c. What is penalized is behaviour consisting in the production of fake credit or debit cards, as well as other payment documents that are not securities, for their circulation or sale. A penalty of up to five years' forced labour or up to six years' imprisonment is foreseen for it. A cumulative fine of one hundred thousand to three hundred thousand rubles or a salary/other income sentenced for a period of one to two years is also imposed. The Russian legislator provided for an aggravated type of counterfeit of other legal tenders with the purpose of their marketing or sale. On the basis of Art. 187 sec. 2 of the R.p.c., a person will be held responsible if they acted (i.e. under Art. 187 sec. 1 of the R.p.c.) within an organized group. A penalty of forced labour for up to five years or a prison sentence for up to seven years was provided for meeting the constituent elements of the type. There is a possibility of a cumulative fine of up to a million rubles or the amount of the perpetrator's salary/other income for a period of up to five years.

The second category consists of fencing-related acts concerning counterfeit money or other legal tenders. We should point to Art. 186 sec. 1 sentence 2 of the R.p.c. On the basis of the above provision, the storage or carriage, for the purpose of their circulation, of counterfeit banknotes of the Central Bank of the Russian Federation, metal coins, state securities or other securities in the currency of the Russian Federation or in a foreign currency, is criminalised. The perpetrator can be punished with up to five years' forced labour or imprisonment for up to eight years. In both cases, it is possible to impose a cumulative fine of up to a million rubles or the amount of the perpetrator's salary/other income for a period of fifteen years.

There are also aggravated and meta-aggravated types provided for the analysed group. As for the first is considered, a circumstance implying a higher penalty is the implementation of a large-scale crime (Art. 186 sec. 2 of the R.p.c.). The sanction here is a penalty of up to twelve years in prison, with the optional cumulative fine

[61] An offence is considered to be committed by a group of persons if two or more perpetrators jointly participated in its commission without prior agreement (Art. 35 sec. 1 of the R.p.c.). On the other hand, an offence committed by a group of persons after the conclusion of an agreement is dealt with when it is committed by persons after prior agreement on the joint commission of the offence. In turn, an offence is considered to have been carried out by an organized group if it was committed by a permanent group of persons who had previously united to commit one or more offences (Art. 35 sec. 3 of the R.p.c.). In accordance with Art. 35 sec. 4 of the R.p.c. and organised criminal group shall mean an organised group or an association of organised groups under uniform management, whose members have joined together to commit one or more serious and particularly serious offences in order to obtain direct or indirect financial or other material benefits.

of up to one million rubles, or up to salary/other income of the perpetrator for the period of five years or restriction of liberty of up to one year. Within the framework of the meta-aggravated type (Art. 186 sec. 3 of the R.p.c.) the constituent element that modifies both the basic type (sec. 1) and the aggravated one (sec. 2) is the commitment of the crime within an organized group. In this case a penalty of up to fifteen years in prison is listed. An optional cumulative sentence of up to two years' imprisonment or a fine of up to one million rubles or the perpetrator's salary/other income for five years may also be imposed.

The last category includes crimes involving the marketing of counterfeit or converted money or securities (Art. 186 sec. 1 sentence 3 of the R.p.c.). Counterfeit banknotes of the Central Bank of the Russian Federation, metal coins, state securities or other securities in the currency of the Russian Federation or in a foreign currency may not be marketed or otherwise there is the penalty of up to five years of forced labour or up to eight years of imprisonment. In addition, it is possible to impose a cumulative fine of up to a million rubles or salary/other income of the perpetrator collected for five years. As part of the release of false values, aggravated and meta-aggravated types are provided for. In the first case, if the crime was a large-scale one, the perpetrator is liable to up to twelve years' imprisonment with the possibility of a cumulative fine of up to a million rubles or the amount of the perpetrator's remuneration/other income for a period of up to five years or a penalty of up to one year of restriction of liberty (Art. 186 sec. 2 of the R.p.c.). On the other hand, on the basis of Art. 186 sec. 3 of the R.p.c., the aggravating element is the commission of the offense described in section 1 or sec. 2 in an organized group. In this case, the penalty may reach up to fifteen years of imprisonment with an optional fine of up to one million rubles or the equivalent of the perpetrator's salary/other income for five years.

G. Lithuania (Penal Code of the Republic of Lithuania of 26 September 2000)[62]

Relevant provisions from the perspective of the subject of work should be sought in the Special Part, Chapter XXXII – "Crimes and offenses against the financial system".[63]

Crimes that undermine the credibility of money in circulation can be divided into three categories. The first one consists of provisions typifying the counterfeiting of individual values (Art. 213 sec. 1 sentence 1 of the L.p.c.) or payment instruments

[62] Lietuvos Respublikos Baudžiamojo Kodekso Patwirtinimo Ir Įsigaliojimo 2000 m. rugsėjo 26 d. Nr. VIII-1968 (source: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555 [access: 1.12.2022]), hereinafter referred to as L.p.c.

[63] For the statistical image of counterfeiting crime, see G. Švedas, *Trends of criminal policy in the Republic of Lithuania during the years 1995–2004*, [in:] K. Indecki, S. Lelental (red.), *Aktualne zagadnienia litewskiego i polskiego prawa karnego*, Łódź 2007, pp. 9–10.

(Art. 214 sec. 1 sentence 1 of the L.p.c.). The second category grouped the release of counterfeit or altered money, paper securities (Art. 213 sec. 1 sentence 2 of the L.p.c.) or an instrument (Art. 214 sec. 1 sentence 2 of the L.p.c.). The third category includes the type of fencing fake payment instruments (Art. 214 sec. 1 sentence 3 of the L.p.c.). It is worth noting that only in relation to the type from Art. 213 sec. 1 of the L.p.c., an aggravated type is provided for (Art. 213 sec. 2 of the L.p.c.).

As part of the introductory remarks, it is also necessary to mention the regulation from Art. 7 item 4 of the L.p.c. On the basis of this provision, criminal liability on the basis of the principles provided for in the Lithuanian Penal Code, will be borne by those who commit the offences provided for in binding international agreements, including, among others, the production or sale of fake money or securities (Art. 213 of the L.p.c.). The scope of application of the provision is not limited by the offender's nationality, place of residence, place of commission and whether the act is punishable under the law of the place of its commission. It is worth adding that only in the cases expressly included in the special part of the Act, the Lithuanian law provides for the liability of legal persons (Art. 20 sec. 1 of the L.p.c.).[64]

First of all, attention should be paid to the content of Art. 213 sec. 1 sentence 1 of the L.p.c.[65] On the basis of that provision, liability shall be attributed to the person,

[64] In order to hold a legal person criminally liable, it is necessary to establish the circumstances related to the type of offence, its perpetrator and the relationship and scope of rights/obligations of the perpetrator in the structure of the legal person. The liability of a legal person may, in principle, arise in two cases. First, for an offence committed by a natural person only if the legal person has obtained an advantage from that offence or if it has been committed in its interest. Moreover, it is necessary to establish that the perpetrator was a natural person acting individually on behalf of a legal person, being a managing entity with the right to represent that legal person or make decisions on its behalf or control its activities (Art. 20 sec. 2 items 1–3 of the L.p.c.). Secondly, for an offence, if there were benefits of that offence, and the perpetrator was an employee or an authorized representative who committed the offence as a result of improper supervision or control of that person under, from Art. 20 sec. 2 items 1–3 of the L.p.c. (Art. 20 sec. 3 of the L.p.c.); for detailed considerations, see LL.M.D. Soleveičikas, *The essence of corporate criminal punishment: an analysis*, [in:] K. Indecki, S. Lelental (red.), *op. cit.*, pp. 81–107; R. Drakšas, *Problems of corporate ciminal liability*, [in:] K. Indecki, S. Lelental (red.), *op. cit.*, pp. 45–61.

[65] It is worth noting that the Lithuanian criminal law introduces a number of classifications of prohibited acts taking into account divergent factors. The following should be distinguished: a specific form of the subject party (intentional or unintentional crimes), the threat of punishment (crime or misdemeanor) or the degree of their social harm. In this context, there are further divisions. Deliberate crimes can be classified as lesser, minor, serious or very serious (Art. 11 sec. 3 of the L.p.c.). The limit of the statutory threat of punishment is decisive in this case. A lesser offence is one for which a sentence of up to three years' imprisonment is provided. A minor offence is a deliberate offence that has been threatened with imprisonment for three to six years (Art. 11 sec. 4 of the L.p.c.). The last two categories are serious and very serious crimes. Pursuant to Art. 11 sec. 5 of the L.p.c., a serious crime is the one where the penalty of imprisonment exceeding

who produces counterfeit banknotes, coins or other national currency, or domestic or foreign securities in circulation in Lithuania, issued in litas or other currency. The statutory threat provides for a sanction[66] in the form of a fine,[67] restriction of liberty[68] or detention[69] or a custodial sentence of up to five years.[70] In the context of criminal law protection of other legal tenders, we should also interpret Art. 214 sec. 1 sentence 1 of the L.p.c. It criminalizes the production of counterfeit or forged payment instruments. The penalty provided for in the standardisation provision is a fine, restriction of liberty sentence or imprisonment of up to six years.

The second of the distinguished categories of offences is behaviour involving the marketing of counterfeit money, securities and other legal tenders. It is worth paying attention to the prohibited act described in Art. 213 sec. 1 sentence of the

six years but not exceeding ten years is provided for. A very serious crime is a criminal offence punishable by a penalty of more than ten years (Art. 11 sec. 6 of the L.p.c.).

[66] It is worth noting the division of sanctions that can be imposed against the perpetrator of a crime or offence. This division is not separable. In Art. 42 sec. 1 items 1–8 of the L.p.c., we find the catalogue of sanctions provided for the perpetrator of the crime. This includes deprivation of public rights (item 1), community service (item 3), fine (item 4), detention (item 6) and term imprisonment (item 7) and life imprisonment (item 8). Whereas, in Art. 42 sec. 2 item 1–6 of the L.p.c., the list of punishments against the perpetrators of offences has been included. In these cases, the two most severe penalties under Art. 42 sec. 1 items 7–8 of the L.p.c. cannot be adjudged.

[67] Pursuant to Art. 47 sec. 1 of the L.p.c., fine constitutes a pecuniary penalty imposed by the court in cases provided for in an Act. Its amount is determined taking into account the minimum standard of living (MGL), assuming that the lowest amount of the fine is one MGL. Depending on the category of crime, the upper limits of the statutory threat of a fine will vary. For example, the counterfeiting defined in Art. 213 sec. 1 sentence 1 of the L.p.c. is considered a minor crime, which was threatened with a fine of up to two hundred MGLs (Art. 47 sec. 3 item 3 of the L.p.c.).

[68] The penalty of restriction of liberty may consist in an obligation for the offender to refrain from changing their place of residence without the knowledge of the court or authority supervising the enforcement of the penalty. In addition, the convicted person is obliged to submit reports on the course of execution of the sentence, including the imposed prohibitions or obligations (Art. 48 sec. 3 items 1–3 of the L.p.c.). As part of the penalty of restriction of liberty (Art. 48 sec. 5 and 6 of the L.p.c.), the court may impose a number of prohibitions on the convicted person (e.g. approaching specific places, contacting specific persons) or orders (e.g. to repair damage caused by the crime, undergo rehabilitation treatment or take up paid work). Interestingly, Art. 48 sec. 7 of the L.p.c. constitutes the basis for the use of orders or prohibitions not provided for in the criminal law as part of the penalty of restriction of liberty. This was subject to the reservation that such prohibitions or orders would have a positive effect on the attitude of the convicted person.

[69] Detention is a short-term deprivation of liberty in a detention centre. Its period was made dependent on the gravity of the crime that is the subject of the trial. In the event of misdemeanors, the detention may be adjudged for a period of ten to forty-five days. On the other hand, for a crime, the detention period may range from fifteen to ninety days (Art. 49 sec. 1 and 3 of the L.p.c.).

[70] Pursuant to Art. 50 sec. 2 of the L.p.c., imprisonment may be adjudged for a period of three months to twenty years. It is adjudged in months and years. If the special provision so provides, the maximum term of imprisonment may be extended up to twenty-five years.

L.p.c. It says that who sells counterfeit banknotes, coins or other national currency or national or foreign securities in circulation in Lithuania issued in litas or other currency, is liable to penalty. The sanction shall be a fine, restriction of liberty, detention or a custodial sentence for a period not exceeding five years. As part of the release of false values, an aggravated type is provided for. The circumstance that constitutes the modifier is the sale of a large quantity or value[71] of counterfeit banknotes or coins issued in litas or other countries' currency or securities in circulation in Lithuania or another country. This act was penalized with the penalty of imprisonment for three to ten years. The explanation should be supplemented with the content of Art. 214 sec. 1 sentence 2 of the L.p.c., a fine, arrest or imprisonment of up to six years shall be imposed on anyone who has used or ordered a counterfeit or falsified payment instrument to initiate a financial transaction.

The last category consists of the offence under Art. 214 sec. 1 sentence 3 of the L.p.c. In this case, behaviour consisting in the acquisition of a fake or counterfeit payment instrument is criminalised. The offence was criminalised under penalty of a fine, detention or imprisonment for up to six years.

H. Latvia (Criminal Law of the Republic of Latvia of 8 July 1998)[72]

Provisions specifying crimes that undermine trust in circulating money, securities and other legal tenders should be sought in the Particular Part, Chapter XIX – "Economic Crimes".

Offences under the Latvian Criminal Act can be divided into four categories. The first one consists of types consisting in counterfeiting or converting circulating money and public financial instruments denominated in domestic or foreign currency (Art. 192 sec. 2 sentence 1 of the Lv.p.c.). This is the primary provision in relation to Art. 193 sec. 3 sentence 1 of the Lv.p.c., which criminalizes a range of counterfeiting behaviours that did not fall within the scope of the provision of Art. 192 sec. 2 sentence 1 of the Lv.p.c. The second category includes offences related to fencing, i.e. offences prohibited under penalty, which are described in Art. 192 sec. 1 of the Lv.p.c. The types included in the third category boil down to the circulation of counterfeit money or a financial instrument (Art. 192 sec. 2 sentence 2 of the Lv.p.c.). Also here, the rule of statutory subsidiarity is provided for, because the auxiliary provision – including all other ways of marketing non-original values – is

[71] The Lithuanian legislator often uses the qualifying sign "large number" or "large value", avoiding defining them. Interpretative guidance may be provided by Art. 190 of the Lv.p.c. For the purposes of Chapter XXVIII – "Offences against property, property rights and property interests", property is considered to be of high value when it exceeds the amount of 250 MGL.

[72] Krimināllikums Nr. 199/200, 08.07.1998 (source: https://likumi.lv/ta/id/88966-kriminallikums [access: 1.12.2022]), hereinafter referred to as Lv.p.c.

included in Art. 193 sec. 3 sentence 2 of the Lv.p.c. What is of particular interest is the type described in Art. 192[1] of the Lv.p.c., which was included in the last category. From the point of view of the characteristics of the signs, it constitutes a specific preparation for the crimes grouped in the previous variants.[73] It is also worth noting that, with the exception of two cases, there is also a provision for an aggravated type of the analysed offences.

The analysis of the provisions referring to the legal and criminal protection of money and its surrogates against counterfeiting should start with Art. 192 sec. 2 sentence 1 of the Lv.p.c. From it follows that whoever counterfeits in a significant amount banknotes, coins, state financial instruments or foreign currencies in circulation in the Republic of Latvia, or intended for circulation, shall be liable to prosecution. This act was penalized[74] with up to eight years' imprisonment,[75] with the optional confiscation of property.[76] The type under Art. 193 sec. 3 sentence 1 of the Lv.p.c supplements the scope of legal and criminal law protection of legal tenders against interference with their content and structure. Whoever falsifies a financial instrument or a legal tender, is liable to imprisonment for a period not exceeding seven years with the optional confiscation of property. This provision applies when the behaviour of the perpetrator does not exhaust the features of the prohibited act described in Art. 192 of the Lv.p.c., the Latvian legislator provided for an aggravated type of counterfeit of other

[73] It was found that the type from Art. 192[1] of the Lv.p.c. is a "specific" preparation for acts of the first category, because the Latvian criminal law regulates such a stadium form. Pursuant to Art. 15 sec. 3 of the Lv.p.c., preparation is considered to be the finding or adaptation of means or tools or the deliberate creation of circumstances conducive to the commission of an intentional crime, and further, as long as it could not be continued for reasons beyond the control of the perpetrator. Criminal liability for the commission of this stage of pre-conduct is uprated in the case of serious or particularly serious crimes. A serious offence is a criminal offence which, if committed intentionally, is punishable by a term of imprisonment exceeding three years but not exceeding eight years; for unintentional types, the statutory threat must exceed eight years. Particularly serious offences are those in which the penalty provided for carries over eight years' imprisonment or is punishable by life imprisonment (Art. 7 sections 4 and 5 of the Lv.p.c.).

[74] Two types of criminal penalty were distinguished. Basic and additional penalties. The first category includes: a fine, forced labour and deprivation of liberty (Art. 36 sec. 1 items 2, 5, 6 of the Lv.p.c.). Among the additional penalties there are: confiscation of property, limitation of rights and supervision of a probation officer (Art. 36 sec. 2 items 1, 4 and 5[1] of the Lv.p.c.).

[75] The custodial sentence is the forced isolation of the sentenced person. It is generally adjudicated as a penalty from fifteen days to twenty years (Art. 38 sec. 2 of the Lv.p.c.). In clearly indicated cases, it is possible to impose a life imprisonment sentence (Art. 38 sec. 3 of the Lv.p.c.).

[76] Confiscation of property means the forced transfer, free of charge, of property held by the convicted person to the state. This regulation was extended to those assets that the convicted person transferred to another natural or legal person (Art. 42 sec. 1 of the Lv.p.c.). This institution, being both a basic and an additional penalty, may be adjudged on only if a special provision so provides.

legal tenders. Modifying elements include committing a crime on a large scale or by an organised group.[77] The aggravated type is connected with liability to imprisonment for two to twenty years, with the optional confiscation of property and supervision by a probation officer for a period not exceeding three years.[78]

As part of the crimes related to fencing of counterfeit money, payment instruments or legal tenders, we should quote Art. 192 sec. 1 of the Lv.p.c. It criminalises the transport, transfer, purchase or storage of counterfeit banknotes, coins, state financial instruments or foreign currencies in circulation in the Republic of Latvia or intended for circulation, with a view to their distribution. The offence is connected with liability to imprisonment for up to five years or the penalty of forced labour[79] or a fine[80] with the optional confiscation of property. We should indicate the aggravated type under Art. 192 sec. 3 of the Lv.p.c., the higher penalty is imposed in case of commission of an act within an organized group or when it has reached a large scale. The statutory penalty here is imprisonment for two to ten years with an optional penalty of confiscation of property and supervision by a probation officer for a period of three years.

The third category is behaviour, which consists in circulating false values. We should indicate the act stipulated in Art. 192 sec. 2 sentence 2 of the Lv.p.c. Its con-

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77 Before explaining the element of an "organised group", the phenomenal form of the offence must be interpreted. Complicity (jointly committed) is a prohibited act in which two or more persons (i.e. a group) together, knowing about it, directly committed an intentional criminal offence (Art. 19 of the Lv.p.c.). In turn, an organized group is a union of more than two people, formed with the intention of jointly committing one or more crimes, the members of which, by prior agreement, have shared responsibilities (Art. 21 sec. 1 of the Lv.p.c.).

78 Pursuant to Art. 45^1 sec. 1 of the Lv.p.c., the supervision of the probation officer is an additional penalty imposed by the court or the prosecutor to ensure supervision over the conduct of the convict, support their rehabilitation and prevent the commission of new crimes. It is adjudged for a period from one year to three years (Art. 45^1 sec. 2 of the Lv.p.c.).

79 Forced labour is understood as a forced involvement in the necessary social work designated by the executive body, which the sentenced person is to perform in the place of their residence in free time, apart from their basic work or education and without remuneration. This type of sentence can be adjudged as both a primary and an additional punishment. In the former case, it shall be between forty and two hundred and eighty hours. On the other hand, in relation to those sentenced to prison with conditional suspension of sentence execution, forced labor may be ordered for a period of forty to one hundred hours (Art. 40 sec. 1 of the Lv.p.c.).

80 A fine is a sum of money which, in a certain amount, is ordered to be paid to the convicted person within thirty days. Depending on whether the fine constitutes a primary or an additional penalty and depending on the degree of social harm of the conduct and the financial situation of the perpetrator, its amount may vary. Detailed considerations in this regard would exceed the requirements of the present work. We should settle with the reference to Art. 41 sec. 2–3 of the Lv.p.c. The financial situation of the perpetrator is assessed on the basis of the ability to immediately pay a fine or obtain income enabling it to be paid within the prescribed period (Art. 41 sec. 4 of the Lv.p.c.).

tent includes the norm of the prohibition of distribution in a significant number of banknotes, coins, state financial instruments or foreign currencies already circulating in the Republic of Latvia or intended for circulation. The above type was linked with a penalty of up to eight years' imprisonment with the optional confiscation of property. It is worth mentioning the crime defined in Art. 193 sec. 3 sentence 2 of the Lv.p.c., it is an auxiliary provision in relation to the type of fencing described in Art. 192 of the Lv.p.c. It is applicable only in the event of the perpetrator's failure to exhaust the elements of original type. The said provision says that conduct involving the dissemination or use of a counterfeit or converted financial instrument or legal tender has been criminalised with a penalty of up to seven years of imprisonment with optional confiscation of property. As part of the subsidiary variant of fencing of other legal tenders, an aggravated type is provided for (Art. 193 sec. 4 of the Lv.p.c.). Circumstances that imply a more severe penalty are the commission of a crime on a large scale or within an organised group. In such cases, the possible penalties range from two to ten years of imprisonment with the optional confiscation of property and supervision by a probation officer for up to three years.

When finalizing the considerations concerning the Latvian Penal Code, we should analyse Art. 192^1 of the Lv.p.c., which is a regulation from the last category. It defines particulars of preparation of crimes included in the first category. It criminalises the production, acquisition, possession or distribution of hardware, software, data, security features (anti-counterfeiting) or any other means adapted to counterfeit banknotes, coins, state financial instruments or foreign currencies in circulation in the Republic of Latvia or intended for such circulation. The implementation of this *sui generis* preparation was threatened with a sanction in the form of a fine, forced labor or imprisonment for up to three years.

2. The States of Roman Legal Culture and the Iberian Peninsula

A. Italy (Penal Code of 19 October 1930)[81]

Crimes against the authenticity of the circulating currency and other legal tenders should be sought in Book II – "Crimes in particular", Title VII – "Offences against public faith", Chapter I – "Counterfeiting of money, public credit cards, stamps and fiscal stamps".

From the point of view of the title issue, crimes that undermine the credibility of monetary tokens and their surrogates, which operate under the Italian Penal Code,

[81] Codice penale Regio Decreto 19 ottobre 1930, n. 1398 (source: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398 [access: 1.12.22]), hereinafter referred to as I.p.c.

can be classified into four categories. The first includes prohibited acts consisting in counterfeiting (Art. 453 sec. 1 item 1 of the I.p.c. and sec. 2 of the I.p.c.) or altering (Art. 453 sec. 1 item 2 of the I.p.c. and Art. 454 of the I.p.c.) of the domestic or foreign currency. The second includes behaviours related to the marketing of false values (Art. 453 sec. 1 item 3 sentence 1 of the I.p.c. and Art. 455 of the I.p.c.) The third consists of crimes related to the fencing of false legal tenders (Art. 454 sec. 1 item 3 sentence 2 and item 4 of the I.p.c). The last of the distinguished categories is *sui generis* preparation for counterfeiting money (Art. 461 of the I.p.c.). The subject of the considerations will also be modified types of crimes belonging to some of the categories and the issue of circumstances excluding punishability in the form of active repentance. Attention should also be paid to the rule extending the territorial scope of the Italian Penal Code. In accordance with Art. 7 item 3 of the I.p.c., a citizen or a foreign national who commits an offence of counterfeiting money, legal tender or fiscal stamps or Italian public credit cards abroad, shall be punished under Italian law.[82]

When analyzing crimes grouped in the first category, it is worth noting the division into behaviours consisting in counterfeiting money and its conversion. The first group of behaviours is included in the content of Art. 453 sec. 1 item 1 of the I.p.c. and sec. 2 of the I.p.c.; the second one was stipulated in Art. 453 sec. 1 item 2 of the I.p.c. and Art. 454 of the I.p.c. They will be discussed in the chronology adopted by the Italian legislator. Pursuant to Art. 453 sec. 1 item 1 of the I.p.c., whoever counterfeits a domestic or foreign currency that is a legal tender is liable[83] to a custodial sentence[84] of three to twelve years and a fine of five hundred sixteen to three thou-

[82] M. Pilar, [in:] S. Frankowski (red.), *Prawo karne niektórych państw Europy Zachodniej*, Warszawa 1982, pp. 84–85.

[83] Criminal penalties are divided into primary ones (Art. 17 of the I.p.c.) or of an accessory nature (Art. 19 of the I.p.c.). A separate catalogue is provided for in relation to offences and misdemeanours. The primary penalties for offenders are considered to be the following: death penalty (item 1), life imprisonment (item 2), imprisonment (item 3), fine (item 4). On the other hand, in the case of misdemeanours, the basic penalties include: arrest (item 1) and pecuniary penalty (item 2). A similar division takes place with regard to penalties of an ancillary nature. In the case of offences, the following can be imposed as an accessory penalty: deprivation of public rights (item 1), deprivation of the right to exercise a profession (item 2), loss of legal capacity (item 3), deprivation of the right to perform managerial functions of legal persons (item 4), prohibition of concluding contracts with public administration bodies (item 5), termination of employment or service relationship (item 5-bis) and loss or suspension of parental authority (item 6). On the other hand, in the case of misdemeanours, the accessory sanctions are: suspension of the right to exercise a profession or activity (item 1) and suspension in the performance of managerial functions of legal persons (item 2); cf. M. Pilar, *op. cit.*, pp. 94–95.

[84] Pursuant to Art. 18 of the I.p.c., the term "deprivation of liberty" should be understood as both life imprisonment, term imprisonment and arrest. It is worth noting that the term of imprisonment is from fifteen days to twenty-four years and takes place in one of the penal insti-

sand ninety-eight euros.[85] The above regulation is supplemented by the type from Art. 453 sec. 2 of the I.p.c. Interestingly, the same penalty is imposed on anyone who, being legally authorized to produce and abusing the available tools or materials, produces coins in quantities exceeding the issue order. Modified types of money counterfeiting are also foreseen. In accordance with Art. 453 sec. 3 of the I.p.c., the penalty against the perpetrator of counterfeiting is reduced by one third when the enforcement action relates to money that is not yet a legal tender and the initial date of its validity (issue) is specified. The second of the modified types – aggravated one – is the offence described in Art. 456 of the I.p.c. Penalty for an offence under Art. 453 of the I.p.c. is stricter if the facts established in the proceedings cause a decrease in the prices of currency or government bonds or pose a threat to the amount of credit on domestic or foreign markets. The second group consists of acts consisting in altering the object of the executive action. In accordance with Art. 453 sec. 1 point 2 of the I.p.c., whoever changes authentic coins, giving them the appearance of a higher ones is subject to criminal liability.[86] The sanction is a penalty of three to twelve years in prison and a fine of five hundred and sixteen to three thousand ninety-eight euros. In order to simplify the argument, it should be mentioned that in the case of money conversion, there are analogous modified types, so mitigated (Art. 453 sec. 3 of the I.p.c.) and aggravated (Art. 456 of the I.p.c.), as on the basis of counterfeiting a coin. In the context of the mitigated types of altering, it is worth paying attention to Art. 454 sentence 1 of the I.p.c., because it is a separate modified type of currency counterfeit. Pursuant to the aforementioned provision whoever changes the coins described in Art. 453 of the I.p.c., reducing their value in any way, is liable to imprisonment from one to five years and fines in the amount of one hundred and three to five hundred and sixteen euros.

When initiating considerations on crimes involving the circulation of false values, it is necessary to refer to the type described in Art. 453 sec. 1 item 3 of the I.p.c. According to its content, a person who, not being cooperating in the counterfeiting or alteration of a coin, but acting in agreement with a person who did so or with an intermediary, introduces to the territory of the state or stores or issues or otherwise puts into circulation counterfeit or transformed money, is subject to a penalty of

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tutions designated for this purpose, with the obligation to work and night solitary confinement (Art. 19 of the I.p.c.).

[85] The fine consists in paying the State an amount of not less than fifty and not more than fifty thousand euros (Art. 24 sentence 1 of the I.p.c.). The fine may be a cumulative sanction, not provided for under the statutory threat of punishment, in addition to the penalty of imprisonment, when the offender has committed a prohibited act in order to obtain a financial benefit. In this case, it may range from fifty to twenty-five thousand euros, cf. M. Pilar, *op. cit*., p. 94

[86] If the perpetrator carries out the behaviour in such a way that it gives the imitation the appearance of a lower nominal value, he does not implement the features of the type in question.

three to twelve years' imprisonment and a fine of five hundred and sixteen to three thousand ninety-eight euros. As part of the analysis of modified types, it is necessary to signal Art. 454 sentence 2 of the I.p.c. This regulation describes a mitigated form. Criminal liability is imposed on anyone who, not being cooperating in the conversion of a coin by reducing its value, but acting in agreement with the person who did so or with an intermediary, introduces into the territory of the state or stores or issues or otherwise puts into circulation counterfeit or processed money. As part of the threat of penalty, a sanction in the form of imprisonment from one to five years and a fine of one hundred and three to five hundred and sixteen euros was provided. The second of the acts providing for more lenient criminal liability is the type described in Art. 455 of the I.p.c. According to its content, anyone who (except for the cases provided for in the two previous articles) introduces to the territory of the state or acquires or possesses counterfeit or processed money for the purpose of putting it into circulation, or issues or puts it into circulation in any other way, is subject to the penalties specified in these articles (i.e. Art. 453 and 454 of the I.p.c.), reduced from one third to half. On the other hand, the aggravated types include the behaviour included in the content of Art. 456 of the I.p.c. Interestingly, this type is aggravated in relation to the type from Art. 455 of the I.p.c., which is a mitigated type. According to its content, the penalty provided for in Art. 455 of the I.p.c. can be stricter if the facts established in the proceedings cause a decrease in the prices of currency or government bonds or pose a threat to the amount of credit on domestic or foreign markets.

When analyzing the acts grouped in the next category, it is necessary to indicate the fencing-related behaviour. It is worth noting the offence defined in Art. 453 sec. 1 item 4 of the I.p.c. On its basis, whoever, in order to enter into circulation, acquires or receives from a person, who counterfeited them, or from an intermediary counterfeit or processed money, is subject to criminal liability. Shall the perpetrator exceed the prohibition of the norm, a penalty of three to twelve years' imprisonment and a fine of five hundred sixteen to three thousand ninety-eight euros are provided for. Also, in the case of fencing a fake currency, it is not surprising that we have a mitigated type functioning too (Art. 454 sentence 2 of the I.p.c.). Whoever acquires or receives from the person who counterfeited them or from an intermediary processed money in such a way that its value has been reduced is subject to imprisonment from one to five years and a fine from one hundred and three to five hundred and sixteen euros.

Attention should also be paid to Art. 458 of the I.p.c., which is important for decoding the scope of criminal law protection of provisions located in Title VII thereof. The provision is of an external nature and its purpose is to extend the designations of the object of the executive action. In accordance with Art. 458 sentence 1 of the I.p.c, for the purposes of criminal law, public credit cards should be treated

as money. In view of the above, it is necessary to define the constituent elements of a public credit card. Pursuant to Art. 458 sentence 2 of the I.p.c., the term "public credit card" means, in addition to those which are legal tender as money, bearer cards or coupons issued by governments and all other cards which are legal tender issued by institutions authorised to do so.

What requires analysis as part of the last category, i.e. *sui generis* preparation for counterfeiting of money, is Art. 461 of the I.p.c.[87] In sec. 1 of the aforementioned provision, the production, acquisition, possession or disposal of watermarks, computer programs or instruments intended solely for counterfeiting or processing money, fiscal stamps or paper with a watermark is criminalised. The sanction is a penalty from one year to five years of imprisonment and a fine from one hundred and three euros to five hundred and sixteen euros. The same penalty shall be imposed if the analogous behaviour concerns holograms or other elements of the currency aimed at its protection against counterfeiting or forgery (Art. 461 sec. 2 of the I.p.c.).

In the context of crimes against the credibility of the currency traded, attention should be paid to the regulation of Art. 463 of the I.p.c., providing for an institution of active repentance. That institution shall provide for immunity for the perpetrator who has prevented the commission of a criminal offence from prosecution. Pursuant to Art. 463 of the I.p.c., whoever, having committed any of the acts provided for in the previous articles, manages to prevent counterfeiting, processing, manufacturing or trading of the items indicated in these articles before the authorities are notified, shall not be liable to prosecution.

B. San Marino (New Penal Code of 25 February 1974)[88]

Relevant types of prohibited acts should be sought in Book II – "Particular Part", Title IV – "Crimes against the State", Chapter VII – "Crimes against the Marks of the Sovereignty of the Republic".

Crimes interfering with economic transactions in terms of undistorted circulation of money and other legal tenders can be divided into four categories. The first consists of crimes consisting in counterfeiting or altering money (Art. 401 of the SM.p.c. and Art. 403-bis sec. 1 of the SM.p.c.) and other legal tenders (Art. 401-bis sec. 1 of the SM.p.c.). The second includes crimes involving the circulation of fake currency and other legal tenders (Art. 401 sentence 2 of the SM.p.c., Art. 401-bis sec. 2 of the SM.p.c. and Art. 403-bis sec. 2 sentence 1 of the SM.p.c.). The third category

[87] M. Pilar, *op. cit.*, pp. 89–90.

[88] Nuovo Codice Penale, Legge 25 febbraio 1974 n. 17 emanazione del Nuovo Codice Penale (source: https://www.consigliograndeegenerale.sm/on-line/home/testi-coordinati/docCat.17003123.1.20.20.html [access: 1.12.2022]), hereinafter referred to as SM.p.c.

consists of behaviours that boil down to the fencing of counterfeit monetary tokens (Art. 403-bis sec. 2 sentence 2 of the SM.p.c.). The last category of behaviours is the particular of preparation for counterfeiting money (Art. 403 of the SM.p.c.). The issues of overriding regulations also require reflection (Art. 403-ter of the SM.p.c. and Art. 403-quater of the SM.p.c.), which are applicable to selected crimes from the above categories. In addition, it is worth paying attention to the institution excluding the criminality of counterfeiting money contained in Art. 402 of the SM.p.c.

The analysis should start with Art. 401 sentence 1 of the SM.p.c. Pursuant to the said provision, whoever counterfeits or converts a legal tender or a credit instrument issued by the Republic, is subject to criminal liability. On the grounds of the threat of punishment, a penalty[89] of fourth-degree deprivation of liberty was provided for.[90] What is important, criminal law protection equal to that for domestic currency, is provided for in relation to foreign coins, securities and other valuables (Art. 401 sentence 4 of the SM.p.c.). Supplementing the above regulations can be found in Art. 401-bis sec. 1 of the SM.p.c. This provision stipulates the possibility of fourth-degree deprivation of liberty, for counterfeiting or alteration of a payment instrument in order to obtain undue profit by the offender or another person. The last behaviour was typified in Art. 403-bis sec. 1 of the SM.p.c. The act involves the production of banknotes or coins using legal instruments or materials, but in violation of the rights and conditions under which competent authorities may issue currency or without the consent of those authorities. The implementation of the behaviour was prohibited under the penalty of fourth-degree imprisonment.

The second category includes behaviour, the elements of which are described in Art. 401 sentence 2 of the SM.p.c. It criminalises the use of counterfeit or falsified legal tender or credit instruments issued by the Republic or their introduction into the state territory. From the point of view of the threat of sanction, a fourth-degree custodial sentence was provided for it. As in the case of counterfeit money and other legal tenders, the scope of protection provided for domestic values was extended to foreign coins, securities and other valuable items (Art. 401 sentence 4 of the SM.p.c.).

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[89] The catalogue of sanctions is included in Art. 80 of the SM.p.c. The penalties were ranked from the most interfering with the rights and freedoms of the perpetrator. These include deprivation of liberty (item 1), loss of legal capacity (item 2), detention (item 3), fines (item 4), daily fines (item 5) and judicial reprimand (item 6).

[90] Pursuant to Art. 81 of the SM.p.c., imprisonment is imposed within the following degrees. The first, from three months to a year (item 1), second – from six months to three years (item 2), third – from two to six years (item 3), fourth – from four to ten years (item 4), fifth – from six to fourteen years (item 5), sixth – from ten to twenty years (item 6), seventh – from fourteen to twenty-four years (item 7), eighth – from twenty to thirty-five years (item 8).

In addition, two specific types of placing false values on the market are envisaged. In accordance with Art. 401-bis sec. 2 of the SM.p.c., a person who does not participate in the counterfeiting referred to in Art. 401-bis sec. 1 of the SM.p.c., uses a counterfeit or altered payment instrument, is liable to a fourth-degree prison sentence. A separate, specific type of putting into circulation is described in Art. 403-bis sec. 2 sentence 1 of the SM.p.c. Fraudulent use or introduction into the territory of the State of banknotes or coins which have been produced using lawful instruments or materials, but in contravention of the law and the conditions under which the competent authorities may issue currency or without the consent of those authorities, is punishable with a fourth-degree prison sentence.

The third category includes the fencing of imitations of money and their surrogates. This refers to the act included in the content of Art. 403-bis sec. 2 sentence 2 of the SM.p.c. A person who, in order to obtain a financial advantage, exports or transports, acquires or receives banknotes or coins created using lawful instruments or materials, but in violation of the rights and conditions under which the competent authorities may issue currency or without the consent of those authorities, shall be liable to criminal prosecution. Prohibited acts were penalized under the threat of fourth-degree imprisonment.

As part of the last category we should analyse Art. 403 of the SM.p.c., constituting *sui generis* preparation for certain acts grouped in Title IV. If a person fraudulently manufactures, receives, stores or otherwise acquires, sells or fraudulently disposes of to other persons instruments, articles, computer programs or other means specially configured for the purpose of committing the offences referred to in Art. 204-bis, 204-ter, 401, 401-bis, 403-bis, they are liable to a second-degree prison sentence. The same penalty shall be imposed on any person who undertakes identical acts against holograms or components of currency or payment instruments which are intended to protect them against counterfeiting or altering.

It is worth referring to a range of provisions of a general nature that apply to some of the criminal offences analysed. The first is Art. 403-ter SM.p.c., constituting a *lex specialis* of all the above types. Pursuant to the above-mentioned provision, whoever commits prohibited acts referred to in Art. 401, 403 and 403-bis of the SM.p.c., when they relate to banknotes and coins which were not emitted yet but are intended to be put into circulation as legal tender. The penalty here is fourth-degree imprisonment. The second provision requiring our analysis is Art. 403-quater of the SM.p.c. It defines incitement to commit specific acts interfering with the authenticity of the traded values. Under the threat of imprisonment of the third degree, it prohibits inciting to offences referred to in Art. 401, 403, 403-bis and 403-ter of the SM.p.c.

Article 402 of the SM.p.c. should also be analysed. It includes the institution of active repentance. There shall be no penalty for whoever, having committed the acts provided for in Art. 401 and 401-bis sec. 1 of the SM.p.c., will notify the authorities

about this fact before using or putting into circulation counterfeit or processed legal tender or credit instruments.

C. Kingdom of Belgium (Penal Code of 8 June 1867)[91]

Provisions of a significant nature from the point of view of the subject of work should be sought in Book II – "Crimes, and in particular their punishment", Title III – "Crimes and offenses against public faith", Chapters: I – "False money", II – "Counterfeiting or altering of public instruments, shares, bonds, interest coupons and banknotes authorised by law" and IIa – "Protection of legal tender monetary tokens".

From the point of view of the current division of crimes, the systematization adopted in Belgium is characterised by its originality. It oscillates around the object of direct action targeted by the perpetrator's act. Three categories of offences can be distinguished, among which we find further specialisation. The first includes money counterfeiting (Art. 160–163 of the Be.p.c. and Art. 168 of the Be.p.c.) or placing it on the market (Art. 169 of the Be.p.c.). The second category consists of acts against securities in the form of counterfeiting or altering them (Art. 173–176 of the Be.p.c.) or their unlawful release into circulation (Art. 177 and 178 of the Be.p.c.). The last category concerns other legal tenders and may manifest itself in their counterfeiting (Art. 178-bis of the Be.p.c.) or release in circulation (Art. 178-ter of the Be.p.c.).

The requirements concerning the place of application of the penal code require our reflection. This issue is important from the point of view of combating crime against money circulation. Attention should be paid to Art. 4 of the Be.p.c. Under that provision, a person who has committed an offence outside the territory of the Kingdom, who is a Belgian or a foreign national, is punishable in Belgium only in the cases provided for by law. Such situations are described in Art. 6 to 14 of the Act,[92] referring to the principles of: objective nationality (active personal), subjective nationality (passive personal) and universal repression (universal competence).[93] It is worth noting that pursuant to Art. 6 item 3 of the Belgian code of criminal procedure, any Belgian or any person whose main place of residence is in the territory of the Kingdom who has committed an offence against public faith outside its territory, provided for in Chapters I, II and III of Title III of Book II of the Criminal Code or an offence provided for in Art. 497 and 497bis, is liable to prosecution if the object of the crime or offence is the euro or coins that are legal tender in Belgium, or objects intended for their production,

[91] Code Penal, La loi du 8 Juin 1867 – Code Penal (source: http://www.ejustice.just.fgov.be/eli/loi/1867/06/08/1867060850/justel [access: 1.12.2022]), hereinafter referred to as Be.p.c.

[92] Le titre preliminaire du code de procedurę penale, La loi 17 avril 1878 (source: https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1878041750&la=F [access: 1.12.2022]), hereinafter referred to as Be.c.p.p.

[93] A. Wąsek, *Wprowadzenie do belgijskiego prawa karnego*, Lublin 1994, pp. 32–33.

counterfeiting, alteration or counterfeiting of objects, papers, seals, stamps, tokens or marks of the State, the Belgian administrative authorities or public institutions.[94] That provision allows the Belgian penal law to be applied to the perpetrators of currency counterfeiting committed outside the Kingdom.

The above digression makes it possible to proceed to the main part of the considerations. The first category includes the act typified in Art. 160 of the Be.p.c. Pursuant to that provision, sentence of prison[95] is imposed on those,[96] who counterfeit gold or silver coins, which are legal tender in Belgium or abroad, for a period of between ten and fifteen years. The altering of analogous coins, which are not legal tender, is threatened with a lighter penalty, as the imprisonment ranges from five to ten years (Art. 161 of the Be.p.c.). Counterfeiting of coins which are minted from other metals, whether in Belgium or abroad as legal tender, is punishable by a term of imprisonment of between five and ten years. The same penalty threatens anyone who counterfeits coins denominated in euro (Art. 162 of the Be.p.c.). In these cases, it is possible to impose prohibitions under Art. 33 of the Be.p.c.[97] A separate type

[94] Ch. Hennau, J. Verhaegen, *Droit pénal général*, Bruxelles 1991, pp. 69–73.

[95] Offences committed by natural persons, depending on the gravity of the act, fall into three categories. First, criminal penalties against the perpetrators of crimes. Secondly, corrective punishments against the perpetrators of offences. Thirdly, police penalties against perpetrators of misdemeanors (Art. 7 of the Be.p.c.). The first category includes imprisonment and detention. Corrective penalties include imprisonment and fines. In turn, the police penalties also include arrest and a fine, except that their severity is different than in the case of committing an offense, see A. Wąsek, *Wprowadzenie…*, *op. cit*., pp. 79–81.

[96] The sentence of imprisonment is adjudged as a life sentence or a term (Art. 8 of the Be.p.c.). In accordance with Art. 9 of the Be.p.c., a term of imprisonment may be imposed: from five to ten years (item 1), from ten to fifteen years (item 2), from fifteen to twenty years (item 3), from twenty to thirty years (item 4) and from thirty to forty years (item 5).

[97] Pursuant to Art. 33 of the Be.p.c., courts and tribunals may, in cases provided for by law, deprive or limit to a certain part the use, by the convict, of the rights listed in Art. 31 sec. 1 of the Be.p.c. for a period of five to ten years. It is necessary to clarify the content of the norm from Art. 33 of the Be.p.c., by supplementing this blank with Art. 31 sec. 1 of the Be.p.c. and the rights contained therein. If sentenced to a term of imprisonment equal to or exceeding ten years, the following may also be deprived for life: a public office (item 1), the passive right to vote (item 2), nobility titles or decorations (item 3), the exercise of the function of a jury member, the exercise of the function of an expert (item 4), the right to exercise the function of guardian or curator (item 5), the right to bear arms (item 6). However, these are not the only additional penalties that can be imposed under the statutory threat, see M. Preumont, R. Legros, *La protection de l'individu et la societe en droit pénal materiel*, [in:] *Belgique-Pologne. Tendences de droit pénal*, Bruxelles 1981, pp. 38–41; M. Franchimant, *Le système legale des interdictions professionelles envisagées comme sanctions pénale*, « RDPC » 1965–1966, no. 2, pp. 148–170; R. Screvens, *Le système légal des interdictions professionnelles comme sanction pénale*, « RDPC » 1965, no. 2, pp. 128–147; idem, *Actualités interdiction professionelle pénale*, [in:] *Lieber Amicorum Hermann Bekaert*, Gent 1977, pp. 346–381; A. Wąsek, *Wprowadzenie…*, *op. cit*., pp. 86–87.

consisting in the altering of currency is criminalized by Art. 163 of the Be.p.c. Under the penalty of imprisonment for a period from five to ten years, the altering of coins minted from other metals, whether in Belgium or abroad, legal tender or coins denominated in euro, has been criminalised. The last type within this category is the act under Art. 168 of the Be.p.c. Pursuant to the above-mentioned provision, who, in agreement[98] with counterfeiters, participates in the emission or attempted emission of counterfeit or altered coins, or in the course of their introduction or attempt to place them on the market, is liable to prosecution as a counterfeiter would be.[99] The last offense included in the first category is the unlawful introduction of false values to trading (Art. 169 sec. 1 of the Be.p.c.). Who, without being guilty of an offence under Art. 168 of the Be.p.c., deliberately obtains counterfeit or altered coins and introduces or attempts to introduce them into circulation is liable to prosecution. The offence was prohibited under penalty of imprisonment from one month to five

[98] Pursuant to Art. 66 of the Be.p.c. who: commited or directly cooperated in the commission of the crime (sec. 1), provided assistance in the commission of the offence in any way, and those without whose participation the offence could not have been committed (sec. 2); or through gifts, promises, threats, abuse of power or powers, intrigues or deceitful actions directly incited to commit of the offense (sec. 3) are liable to prosecution as perpetrators. Criminal participation is defined in the content of Art. 67 of the Be.p.c. Participants are considered to be those who: issue an order to commit the offense (sec. 1), provide a weapon, tool or any other means used in it (sec. 2), except in the cases of Art. 66 sec. 3 of the Be.p.c., consciously assist the perpetrator or cooperating perpetrators in preparatory activities, facilitating or carrying out the prohibited act (sec. 3), see A. Wąsek, *Wprowadzenie…*, *op. cit*., pp. 45–47; Ch. Hennau, J. Verhaegen, *op. cit*., p. 162, 233; L. Dupont, C. Fijnaut, *Criminal Law*, Leiven 1992, pp. 156–157; E. Krings, *Aspects de la contribution de la cour la cassation a l'edification du droit*, « JT » 1980, p. 565. It should be noted that the principle of criminal liability of a person participating in the implementation of a prohibited act was based on relative accessory, which means that the penality depends on whether the main perpetrator committed the prohibited act. Participation in the crime is a prerequisite for extraordinary mitigation of the penalty (taking into account Art. 80 and 81 of the Be.p.c.); however, in relation to offences, the penalty may not exceed two thirds of the upper limit of the statutory threat provided for the perpetrator (Art. 69 of the Be.p.c.), cf. A. Wąsek, *Wprowadzenie…*, *op. cit*., pp. 47–48.

[99] The attempted crime is defined in Art. 51–53 of the B.p.c. Criminalisation and penalisation of attempts were adopted only in clearly defined cases (Art. 53 of the Be.p.c.). An attempt is an attempt to behave when the decision to commit a crime or offense has been externalized by an act constituting the beginning of the implementation of the crime and provided that it has been interrupted or has not occurred as a result of circumstances independent of the perpetrator (Art. 51 of the Be.p.c.). The issues of the statutory threat of penalty and its judicial dimension are specified in Art. 52 of the Be.p.c. It is worth noting that in terms of attempted crime, the penalty is subject to extraordinary mitigation, see A. Wąsek, *Wprowadzenie…*, *op. cit*., pp. 41–42; cf. detailed consideration of the issue of attempted crime, e.g.: P.L. Bodson, *Manuel de droit pénal*, Liége 1986, p. 241; F. Tulkens, M. van de Kerchove, *Introduction au droit pénal*, Bruxelles 1991, pp. 230–233; L. Dupont, C. Fijnaut, *op. cit*., p. 145.

years. The inclusion of statutory subsidiarity in the content of the provision leads to the conclusion that the auxiliary provision (Art. 169 sec. 1 of the Be.p.c.) may be applied provided that the scope of the norm is not updated in the original provision (Art. 168 of the Be.p.c.). It is worth paying attention to the aggravated type of Art. 169 sec. 2 of the Be.p.c. Pursuant to that provision, between eight days and five years' imprisonment[100] shall be imposed on any person who, with a view to the placing on the market of counterfeit or converted coins, imports, exports, transports or acquires them. In sec. 3 of the aforementioned provision, the attempt to commit this prohibited act was also criminalised. As part of the statutory threat, a prison sentence of eight days to six months was provided for (Art. 169 sec. 3 of the Be.p.c.). When interpreting crimes grouped in this category, it is necessary to take into account Art. 170bis of the Be.p.c. It constitutes an overriding provision, specifying the object of the executive action. Pursuant to the above provision, Art. 160 to 163 and 168 to 169 of the Be.p.c. should be applied without introducing distinctions in the scope of coins that have already been issued and put into circulation as legal tender and as regards coins that, although intended to be put into circulation as legal tender, have not yet been issued.

The second category consists of acts affecting securities by counterfeiting or altering them or unlawfully putting them into circulation. First of all, we should discuss the offence typified in Art. 173 section 1 of the Be.p.c. According to its content, whoever counterfeits or converts bonds issued by the State Treasury, interest coupons of these bonds, coupons, cheques or transfers issued by the State Treasury, bearer bills issued by the State Treasury or bearer bills of exchange that are legal tender or whose issuance is permitted by law or statute or that are denominated in euro, is liable to criminal prosecution. In the case of implementation of elements of this type, a penalty of imprisonment of fifteen to twenty years is provided for. The same penalty shall threaten anyone who forges or converts bearer bills of exchange which are legal tender or the issue of which is permitted by the law of a foreign state or issued under a provision in force in that state (Art. 173 section 2 of the Be.p.c.). Another type is included in the content of Art. 174 of the Be.p.c. Pursuant to this provision, whoever counterfeits or alters bearer bonds constituting a public debt of a foreign state or interest coupons for such bonds, is subject to imprisonment for a term of ten to fifteen years.

Pursuant to Art. 175 of the Be.p.c. who counterfeits or converts shares, bonds or other securities issued in accordance with the law by provinces, municipalities, administrative bodies or public establishments, companies or natural persons under

[100] On the basis of Art. 169 sec. 2 of the Be.p.c., the penalty of imprisonment is adjudged as a corrective penalty. It is adjudicated in the period from eight days to five years (Art. 25 sec. 1 of the Be.p.c.).

any name or interest or dividend coupons relating to these various securities, is liable to criminal prosecution. Noteworthy is the introduction of differentiation of the intensity of penalisation of the above-mentioned type. The differentiating circumstance is the area of issue of securities subject to causative action. The offender is liable to imprisonment for ten to fifteen years if the issue took place in Belgium, and to imprisonment for five to ten years if the issue took place abroad. The last typifying provision is Art. 176 of the Be.p.c. regulating the issue of liability for criminal complicity in the counterfeiting or introducing securities into trading. On the basis of the foregoing provision, those who, in agreement with counterfeiters, participate or attempt to participate in the issue or marketing in Belgium or attempt to do so, of counterfeit or converted shares, bonds, coupons or promissory notes, shall be punished as counterfeiters or their accomplices.

The type under Art. 177 sec. 1 of the Be.p.c. has an interesting structure. According to its content, if a person, who is not responsible pursuant to Art. 176 of the Be.p.c., knowingly acquires, issues or attempts to issue counterfeit or converted shares, bonds, coupons or bills of exchange, is liable to prosecution. This offence is punishable by imprisonment for one year to five years. It is worth noting that Art. 177 sec. 1 of the Be.p.c., is an example of statutory subsidiarity under the Belgian legislation. In this case, the auxiliary provision (Art. 177 sec. 1 Be.p.c.) will apply only in the event of failure to meet the characteristics of the type described in Art. 176 of the Be.p.c. The aggravated type of putting into circulation of false securities is included in Art. 177 sec. 2 of the Be.p.c. Pursuant to the said provision, whoever, in order to put into circulation, imports, exports, transports, receives or acquires counterfeit or converted shares, bonds, coupons or bills of exchange, is subject to criminal liability. As penalty, a sanction of six months to five years of imprisonment is provided. In Art. 177 sec. 3 of the Be.p.c., it was decided to criminalize the attempt of the aggravated type, which was threatened with imprisonment for a period from three months to a year.

The type described in Art. 178 sec. 1 of the Be.p.c. regulates the secondary release of false securities into circulation. The punishable action is to re-circulate, after having checked or commissioned a check for defects, counterfeit or converted shares, bonds, vouchers or bills of exchange that the perpetrator received in exchange for vouchers. Its implementation was prohibited under the threat of an alternative and cumulative penalty in the form of imprisonment from one month to one year and a fine from fifty to a thousand euros, or only one of these penalties.[101] It is worth

[101] A distinction has been made between the severity of sanctions in relation to the specific gravity of the offence. Unless the special provision provides otherwise, the fine for a committed misdemeanour ranges from one to twenty-five euros (Art. 38 sec. 1 of the Be.p.c.), cf. A. Wijffels, *L'egalité et le systeme des jours – amendes*, « RDPC » 1984, no. 2, p. 297 et seq. As for the offence or crime, the fine is at least twenty-six euros (Art. 38 sec. 2 of the Be.p.c.). In the event of failure to pay this financial penalty and ineffective execution, it is possible to impose a substitute custo-

signaling the criminalization of the pre-completion stage in the form of an attempt (Art. 178 sec. 2 of the Be.p.c.). The attempted offence provided for in the preceding paragraph shall be punishable by a custodial sentence of fifteen days to six months and a fine starting with twenty-six euros or only one of those penalties. It is worth noting Art. 177bis of the Be.p.c. It is an interpretative guide, allowing for the decoding of all objects of direct action to which the attempt of the perpetrator may be directed. Pursuant to the above provision, Art. 173, 176 and 177 of the Be.p.c. apply *mutatis mutandis* to bills of exchange that have already been issued and put into circulation as legal tender and to bills of exchange that are to be put into circulation as legal tender but have not yet been issued.

The last category is the behaviour concerning other legal tenders. The act may take the form of counterfeiting or marketing of inauthentic values. In this regard, attention should be paid to Art. 178bis of the Be.p.c. According to its content, a person who, without being authorised to do so by the competent authority, issues a monetary tokens intended for public trading as a legal tender, is liable to criminal prosecution. If the sanctioned norm is exceeded, the offender is punished from one month to one year of imprisonment and a fine of fifty to ten thousand euros or only one of these penalties.

D. Kingdom of the Netherlands (Penal Code of 3 March 1881)[102]

Relevant provisions for further consideration should be sought in Book II – "Crimes", Title X – "Counterfeiting of currency and banknotes".

Crimes affecting the circulation and credibility of legal tenders can be divided into four categories. The first includes the behaviour consisting in the counterfeiting of coins and banknotes (Art. 208 of the D.p.c.). The second is the introduction of imitation values into circulation (Art. 209 sentence 1 of the D.p.c., Art. 213 and 210 of the D.p.c.). The third category of prohibited acts includes behaviour related to fencing counterfeit or processed coins or banknotes (Art. 209 sentence 2 of the D.p.c.). The last category includes *sui generis* preparation for counterfeiting money (Art. 214 of the D.p.c.). Certain prohibitions will also be considered. Before proceeding with the considerations, it is worth signaling Art. 4 item c of the D.p.c. It is the equivalent of the Polish principle of objective nationality in a restricted approach, enabling the application of the Dutch criminal law to perpetrators of crimes com-

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dial sentence. Importantly, the execution of the fine – as a basic or additional penalty – may be conditionally suspended, see E. Simon-Kreutzer, *Die Geldstrafe in Belgien*, [in:] H.H. Jescheck, G. Grebring (Hrsg.), *Die Geldstrafe im deutschen und ausländichen Recht*, Baden-Baden 1978, pp. 304–330; A. Wąsek, *Wprowadzenie…*, *op. cit.*, pp. 84–85.

[102] Wetboek van Strafrecht, Wet van 3 maart 1881 (source: https://wetten.overheid.nl/BWBR0001854/2021-05-01 [access: 1.12.2022]), hereinafter referred to as the D.p.c.

mitted abroad. Under this provision, Dutch criminal law applies to any person who, outside the Kingdom, is guilty of one of the offences set out in Art. 208 to 214 of the D.p.c. and Art. 216 to 223 of the D.p.c.

The first category includes the act under Art. 208 of the D.p.c. On its basis, criminal liability is incurred by whoever, in order to issue or obtain as authentic and false, counterfeits or converts currency or banknotes. In the event of the implementation of elements of this type, a penalty[103] is provided in form of imprisonment[104] for a period not exceeding nine years or a fine of the fifth category.[105]

Another category is opened by Art. 209 sentence 1 of the D.p.c. Pursuant to the said provision, a person, who intentionally issues as authentic and unadulterated currency or banknotes which they themselves have counterfeited or altered, or whose counterfeiting or alteration they knew at the time of their receipt, shall be liable to imprisonment for a period not exceeding nine years or to a fine of the fifth category. In this context, it is worth bearing in mind Art. 213 of the D.p.c. On its basis, who intentionally puts into circulation a counterfeit currency or counterfeit banknotes shall be liable to prosecution. The update of the scope of applicability of the provision takes place only "subject to Art. 209 of the D.p.c.". This means that the attribution of the offense described in Art. 213 of the D.p.c. may take place only if the

[103] Two types of sanctions are provided for: the primary ones (Art. 9 sec. 1 letter a items 1–4 of the D.p.c.) and additional (Art. 9 sec. 1 letter b items 1–3 of the D.p.c.). The main punishments included: imprisonment, detention, social work and a fine. Additional penalties include deprivation of certain rights, forfeiture of objects and making the judgment public. Additional penalties may be imposed spontaneously or cumulatively with the main penalty or other additional penalties, in cases where the law allows for their imposition (Art. 9 sec. 5 of the D.p.c.).

[104] Pursuant to Art. 10 sec. 1 of the D.p.c., a sentence of imprisonment is imposed as a life sentence or imposed for a definite period. The term of imprisonment is generally not less than one day and not more than eighteen years (Art. 10 sec. 2 of the D.p.c.). The upper limit of the threat may be increased to thirty years when the basic period is insufficient due to the extraordinary dimension of punishment justified: coincidence of crimes, commission of a terrorist offence, recidivism or application of Art. 44 of the D.p.c. (i.e. the increase in the penalty resulting from the misuse of powers or failure to fulfill obligations by an official).

[105] Pursuant to Art. 23 sec. 1 of the D.p.c., the convicted person pays a fine to the State within the time limit set by the Minister of Security and Justice. Both the lower and upper penalty limits have been defined. It may amount to at least three euros (Art. 23 sec. 2 of the D.p.c.), while the maximum amount of the fine is equal to the value in a specific category. According to the first category, the fine can be up to four hundred and thirty euros; the second – four thousand three hundred and fifty euros; the third – eight thousand seven hundred euros; the fourth – twenty-one thousand seven hundred and fifty euros; the fifth – eighty-seven thousand euros; the sixth – eight hundred and seventy thousand euros (Art. 23 sec. 4 of the D.p.c.). The amounts included in Art. 23 sec. 4 of the D.p.c. are adjusted and verified every two years, starting from 1 January each year, depending on the changes in the price index of consumer goods and services since the previous adjustment of these amounts (Art. 23 sec. 9 of the D.p.c.). Where a fine is provided for the commission of an offence for which no category has been established, it may range from the first to the third category.

elements of the type provided for in Art. 209 of the D.p.c. are not met. As part of the statutory threat, a sentence of imprisonment for no longer than four years or a fine of the fourth category was provided for. The next provision that typifies the punitive release of false values is Art. 210 of the D.p.c. Its content says that the deliberate and unlawful introduction into circulation of currency or banknotes recognized as legal tender is subject to criminalisation. In addition, their receipt, acquisition, storage, transfer, import, transport or export for the purpose of putting into circulation shall be prohibited. These acts were penalized under the threat of imprisonment for up to five years or a fine of the fifth category.

When analyzing prohibited acts from the third category, Art. 209 sentence 2 of the D.p.c. should be interpreted. Pursuant to that provision, a person who accepts, collects, stores, transports, imports, transfers or exports such currency or banknotes in order to issue or cause them to be issued as an authentic and genuine currency or banknotes, shall be liable to imprisonment for a period not exceeding nine years or to a fine of the fifth category.

For the last category we should indicate the type included in the content of Art. 214 of the D.p.c. It describes a *sui generis* preparation for thecounterfeiting of the listed values.[106] Criminal liability on pain of deprivation of liberty for a period not exceeding four years or a fine of the fourth category is foreseen for the production, receipt, acquisition or possession of substances, objects or data which are known to be intended for counterfeiting or for altering currency or banknotes.

In the event of conviction for one of the offences included in Art. 208 to 210 of the D.p.c., the court can also order the deprivation of the rights indicated in Art. 28 sec. 1 items 1, 2 and 4 of the D.p.c. This includes a ban on holding office or performing functions (item 1), deprivation of the right to serve in the Dutch armed forces (item 2) and a ban on performing the function of an advisor or judicial administrator. In such cases, the court may order a probation officer to supervise the observance of the above-mentioned prohibitions, in particular those related to the position or function held.

[106] The term *sui generis* was used because the issue of this stage form was regulated. Preparation for an offence punishable by imprisonment for eight years is punishable if the offender deliberately acquires, manufactures, imports, transports, exports or possesses objects, substances, data carriers, rooms or means of transport intended for committing such an offence (Art. 46 sec. 1 of the D.p.c.). The additional penalties provided for the perpetrator are the same as in the case of the execution. The upper risk limit is reduced by half if the preparation is carried out (Art. 46 sec. 2 of the D.p.c.). When a crime is punishable by life imprisonment, the maximum sentence may be fifteen years of imprisonment (Art. 46 sec. 3 of the D.p.c.). There will be no punishability of the pre-completion stage (both preparation and attempt of elements of the type) if the offense was not completed due to circumstances independent of the perpetrator (Art. 46b of the D.p.c.).

E. Grand Duchy of Luxembourg (Penal Code of 18 June 1879)[107]

Provisions specifying prohibited acts, constituting attacks on the correctness of money and securities trading on the basis of the Grand Duchy of Luxembourg should be sought in Book II – "Offences and their punishment in particular", Title III – "Offences and misdemeanours against public faith", Chapter I – "False money" and Chapter II – "Counterfeiting or alteration of public instruments, shares, bonds, interest coupons and banknotes that were authorized by law".

Crimes affecting the credibility of circulating money and its surrogates can be divided into three categories. The first are the acts of counterfeiting coins. In this context, it is necessary to carry out a further classification, due to the type of ore used to mint money or the fact that it has the attribute of legal tender. The first criterion concerns the counterfeiting of gold or silver coins (Art. 160 and 161 of the Lu.p.c.) or coins made of other metals (Art. 162 and 163 of the Lu.p.c.). The second refers to the counterfeit of coins that are not legal tender (Art. 164 to 167 of the Lu.p.c.), where further distinction was also made through the prism of the type of ore used. The second of the distinguished categories includes counterfeiting or conversion of public securities (Art. 173 and 174 of the Lu.p.c.) or these of a private nature (Art. 175 of the Lu.p.c.). The last category includes behaviours involving the placing on the market of counterfeit coins (Art. 168 sentence 2 of the Lu.p.c. and Art. 169 of the Lu.p.c.) or securities (Art. 176 sentence 2 of the Lu.p.c. to Art. 178 of the Lu.p.c.). The following issues will also be considered: the liability of persons cooperating with the perpetrator of the crime (Art. 168 sentence 1 of the Lu.p.c. and Art. 176 sentence 1 of the Lu.p.c.), a cumulative fine (Art. 214 of the Lu.p.c.) and the institution of active repentance (Art. 192 of the Lu.p.c.).

The analysis of the offences grouped in the above categories should be preceded by remarks of a historical nature, which are relevant for the interpretation of the applicable regulations. The most important in this respect is Art. 160 sec. 1–3 of the Lu.p.c. in the version unified until 1 November 2018,[108] constituting an explanation of statutory expressions relevant to the criminal law protection of money and its surrogates. Pursuant to the contents of Art. 160 sec. 1 of the Lu.p.c., "currency" means banknotes and coins that are legal tender or the issuance of which is permitted by law in the Grand Duchy of Luxembourg or abroad. "Tangible payment instruments" shall mean tangible payment instruments issued by payment service

[107] Code pénal, Loi du 18 juin 1879 (source: http://www.legilux.public.lu/eli/etat/leg/loi/1879/06/18/n1/jo [access: 1.12.2022]), hereinafter referred to as Lu.p.c.

[108] This provision is currently not in force. For a unified version of penal code of Luxembourg in English, see https://www.legislationline.org/download/id/8273/file/Luxembourg_Criminal_Code_am2018_fr.pdf [access: 1.12.2022].

providers or commercial institutions that are protected against fraud or fraudulent use, making it impossible to merge with another instrument, in order to transfer or withdraw money or monetary value (Art. 160 sec. 2 of the Lu.p.c.). In addition, for the purposes of the Criminal Code, "securities" means title documents, claims or securities which have been lawfully issued by a legal person governed by public or private law (whether under the laws of Luxembourg or a foreign State) or by an international financial institution or by a natural person. It should be remembered that the current law does not provide for such legal definitions. Due to the lack of indication of how the terms should be understood, the use of the historical method of interpretation may lead to correct interpretative results.

At the outset, it is necessary to indicate the type included in Art. 160 of the Lu.p.c. Pursuant to the above provision, who has counterfeited gold or silver coins, which are legal tender in the Grand Duchy is liable to prosecution. In the case of the implementation of signs of type, a penalty[109] is provided, ranging from ten to fifteen years of heavy labour.[110] In turn, if such coins are processed, the perpetrator will be punished with a criminal penalty of imprisonment (Art. 161 of the Lu.p.c.).[111] The criminalization of counterfeiting coins minted from ores other than gold and silver, was carried out in the type of Art. 162 sec. 1 of the Lu.p.c. Counterfeiting of coins of other metals which are legal tender in the Grand Duchy is punishable with corrective imprisonment for a period from one year to three years.[112] In Art. 162

[109] An offence punishable by a criminal penalty is a crime. An offence for which a corrective penalty is foreseen is an offence. On the other hand, an offence punishable by policing penalty is a misdemeanour (Art. 1 sec. 1–3 of the Lu.p.c.). Pursuant to Art. 7 of the Lu.p.c., criminal penalties include the following penalties: death penalty (item 1), heavy labour (item 2), detention (item 3), criminal prison (item 4) and deprivation of titles, degrees, functions, positions or public offices (item 5). In addition, in the case of both criminal and corrective penalties, certain political and civil rights may be deprived and the offender may be released with special supervision. In relation to corrective and police matters, it is possible to impose a custodial sentence (ordinary prison), the intensity of which varies depending on whether it concerns an offence or a misdemeanour. In each category of criminal cases, a fine and extended confiscation may be imposed.

[110] The penalty of hard labour is imposed as a life sentence or a penalty of a timely nature (Art. 12 of the Lu.p.c.). In the latter case, it ranges from ten to fifteen years or from fifteen to twenty years. Ones sentenced to hard labour, they shall serve it in a separate unit known as *la maison de force à Luxembourg*.

[111] A criminal penalty of imprisonment is imposed for five to ten years (Art. 13 of the Lu.p.c.). As in the case of the penalty of heavy labour, the penalty of imprisonment is carried out within a separate Chamber.

[112] Pursuant to Art. 25 sec. 1 of the Lu.p.c., a corrective sentence of imprisonment is imposed in the amount from eight days to five years. However, the special provision may differently determine the amount of the statutory threat of this sanction. In Art. 25 sec. 2 and 3 of the Lu.p.c., clarify the terms "day" and "month". The duration of one day of imprisonment in the case is twenty-four hours, while a month of application of this penalty is thirty days.

sec. 2 of the Lu.p.c., the scope of the sanction threatening the perpetrator has been clarified. Pursuant to the above-mentioned provision, within the statutory threat, the prohibition set out in Art. 33 of the Lu.p.c., or placement under special police supervision for a period of five to ten years may also be adjudged.[113] On the basis of Art. 162 sec. 3 of the Lu.p.c., the implementation of the stage form of the prohibited act, i.e. an attempt was prohibited under the penalty of a corrective of imprisonment ranging from three months to two years.[114] The conversion of analogous coins carries more lenient corrective penalty of imprisonment for three months up to a year. The implementation of counterfeiting of gold or silver coin, which is not a legal tender in the Grand Duchy, should be assessed differently. This issue is addressed by the type included in Art. 164 of the Lu.p.c. On its basis, the offender is subject to criminal penalty of deprivation of liberty. Their altering is threatened with a corrective sentence of imprisonment of one to five years (Art. 165 sec. 1 of the Lu.p.c.). The scope of the statutory threat of penalty was extended in this case by the prohibition under Art. 33 of the Lu.p.c. and special police supervision for a period of five to ten years. A separate unit of the legal text criminalises the counterfeiting of coins that are minted from other metals than gold or silver and do not constitute a legal tender in Luxembourg leading to the redemption of monetary liabilities (Art. 166 sec. 1 of the Lu.p.c.). In this case, the threat of a correctional sentence of imprisonment ranges from six months to two years. At the same time, under the threat of a corrective sentence of imprisonment, the attempt to commit this crime was also criminalised (Art. 166 sec. 2 of the Lu.p.c.). Processing such coins, pursuant to Art. 167 of the Lu.p.c., was threatened with a corrective sentence of imprisonment of two to six months. It is interesting to consider the procedure consisting in distinguish-

[113] Pursuant to Art. 33 of the Lu.p.c., Courts and Tribunals may, in the cases indicated in the Act, prohibit, in whole or in part, the exercise of the rights listed in Art. 31 of the Lu.p.c. for a period of five to ten years. The reference contained in the content of the provision raises the need to decode the blank. In accordance with Art. 31 of the Lu.p.c., the prohibition may include the restriction or deprivation of the following rights or freedoms: to perform public office or to hold an office (item 1), active or passive electoral law (item 2), loss of decorations and titles (item 3), of legal capacity (item 4), to sit on the family council, to act as a guardian, curator, interim administrator or defender (item 5), to carry weapons and serve in the armed forces (item 6) and to run a school or teach in an educational institution as a teacher or manager (item 7).

[114] An attempt is punishable when the intent to commit an offense or misdemeanour has been externalized by an act of perpetration, constituting the beginning of the implementation of a prohibited act, which has only been suspended or has not had effect due to circumstances independent of the perpetrator (Art. 51 of the Lu.p.c.). In Art. 52 sec. 1 of the Lu.p.c., the scope of responsibility of the perpetrator of the attempt was limited. It was assumed that there is a threat of a penalty immediately lower than the one provided for a given type. Detailed issues for each type of penalty are included in Art. 52 sec. 2 letters a–i of the Lu.p.c. In order to criminalise the attempt, the legislator uses an appropriate clause (Art. 53 of the Lu.p.c.).

ing within the framework of an autonomous type, participation in the counterfeit of money, which is understood more broadly than on the basis of the previously analyzed regulations. Pursuant to Art. 168 sentence 1 of the Lu.p.c., persons who, in agreement with counterfeiters, participate or attempt to participate in the issuance of coins or in the counterfeiting or alteration of such coins are liable to prosecutions as would the perpetrators be.[115] The last behaviour classified in the first category is the type described in Art. 171 of the Lu.p.c. According to its content, whoever counterfeits or converts coins of the Customs Union countries, issues such a coin or participates in the issuance of such coins shall be punished in accordance with Art. 160, 161, 162, 163, 168 and 169 of the Lu.p.c.

When proceeding to the analysis of crimes of the second category, it is necessary to indicate Art. 173 of the Lu.p.c. According to its content, it is forbidden, under penalty of from fifteen to twenty years of heavy labour, to counterfeit or convert bonds issued by the State Treasury, interest coupons on these bonds or bearer bonds, the issuance of which is permitted under the Act. Next, attention should be paid to the type included in Art. 174 sec. 1 of the Lu.p.c., which criminalises the falsification of foreign securities. Under penalty of ten to fifteen years of hard labour, it is forbidden to counterfeit or convert bearer bonds constituting a public debt of a foreign state, interest coupons on these bonds or bearer bonds, the issuance of which is permitted by the law of a foreign state. Where the object of the causative action is a security issued by a Customs Union country, the offender shall be subject to the penalty provided for in Art. 173 of the Lu.p.c.

[115] It is necessary to distinguish entities cooperating and participating in the commission of a prohibited act. In Art. 66 of the Lu.p.c., in its sections 1 to 4 we find definitions of perpetration and criminal cooperation. The perpetrators of the offence or misdemeanor are those who: commit the offence or misdemeanor or who directly cooperate in its commission (sec. 1); by any act, provide such assistance in its performance that without their help the offense could not have been committed (sec. 2); through gifts, promises, threats, abuse of power or powers, intrigues or deceitful actions directly incite to commit of the offense or misdemeanor (sec. 3) and speaking at meetings or in public places, or by posting a notice or printed (or other) materials, sold or disseminated, directly call for the commission of a crime (sec. 4). In turn, Art. 67 of the Lu.p.c. lays down who should be understood as a participant. This is a person, who: issued the instruction to commit the crime (sec. 1); provided weapons, tools or other means used in the offense or misdemeanor, knowing that they are to be used in it (sec. 2) and who (with the exception of Art. 66 sec. 3 of the Lu.p.c.) knowingly assisted the perpetrator or perpetrators of the offense or misdemeanor in its preparation, attempt or commission (sec. 3). In terms of participation in the crime, the legislator was in favour of limited accessory from the point of view of the penalty. The co-participants of the crime are punished with a penalty directly lower than the one that they would incur if they were its perpetrators (Art. 69 of the Lu.p.c.). The penalty shall be imposed in accordance with the gradation provided for in Art. 52 of the Lu.p.c. The penalty cannot exceed two-thirds of the upper limit of the statutory threat.

Pursuant to Art. 175 sentence 1 of the Lu.p.c., anyone who counterfeits or converts shares, bonds or other securities issued in accordance with the law by municipalities, public institutions, companies or private persons, or interest or dividend coupons related to these securities, is liable to criminal prosecution. This provision shall apply only when the original emission has taken place in the Grand Duchy or a country belonging to the Customs Union. Otherwise, the offender is subject to imprisonment (Art. 175 sentence 2 of the Lu.p.c.). In Art. 176 sentence 1 of the Lu.p.c., we find criminalisation of the phenomena of securities fraud. A person who, in agreement with a counterfeiter, participates or attempts to participate in the issuance of coins or in the counterfeiting or alteration of shares, bonds or coupons shall be punished as a perpetrator of the counterfeit. Acts grouped in the last category consist of unlawful release of counterfeit or converted money or its surrogates. Chronologically, the provision of Art. 168 sentence 2 of the Lu.p.c. should be analysed. It contains a norm prohibiting the participation in or attempt to participate in the marketing of counterfeit or converted coins in Luxembourg. Its exceeding was penalized under the threat of a sanction provided for counterfeiting. The next type consisting in the marketing of false values is included in Art. 169 of the Lu.p.c. According to its content, a person who, not being guilty of participation defined in the previous article, knowingly obtains counterfeit or processed coins and introduces or attempts to introduce them into circulation, is liable to prosecution. In this case, the perpetrator is subject to a corrective sentence of imprisonment from one month to three years.

The basis for criminal liability for the criminal release of false securities into circulation as part of the accessorial form of participation is Art. 176 sentence 2 of the Lu.p.c. On its basis, those who, in agreement with the counterfeiters, market or attempt to market in the territory of the Grand Duchy counterfeit or converted shares, bonds or interest or dividend coupons shall be punished as counterfeiters. In turn, whoever, not being guilty of participation specified in the previous article, knowingly obtains counterfeit or converted shares, bonds, coupons or bills of exchange, is subject to a corrective penalty of imprisonment from one to five years. The type included in Art. 178 of the Lu.p.c., where the re-introduction of false values is described, is particularly interesting. Who, having received counterfeit or converted shares, bonds or coupons, puts them back into circulation after checking their defects, breaks this norm. The above-mentioned type was threatened with an alternative-cumulative penalty of corrective imprisonment of one month to one year or a fine of fifty to one thousand francs.[116]

[116] Pursuant to Art. 38 sec. 3 of the Lu.p.c., the fine constitutes a financial penalty collected for the benefit of the State. The limits of the statutory threat are different, taking into account the degree of criminality of the behaviours. In the case of offences, it is at least twenty-six francs

In addition, attention should be paid to three regulations. The first is the institution of active repentance under Art. 192 of the Lu.p.c. On its basis, who committed the offences under Art. 160 to 168 or Art. 171 to 176 or Art. 180 of the Lu.p.c., shall be exempted from the penalty if, before issuing counterfeit or processed coins or counterfeit or processed securities and before initiating prosecution, they provided the authorities with information about the perpetration and perpetrators of these crimes. It is also worth signalling the interpretative rule, resulting from Art. 213 of the Lu.p.c. That provision provides, *inter alia*, that a penalty may be imposed on persons who use counterfeit, illegally issued or altered coins, bonds, coupons only if the offender used a counterfeit or altered object with the intention of fraud or with the intention of causing damage. Moreover, in Art. 214 of the Lu.p.c., the statutory threat of penalty for all types of crimes grouped in Chapters I and II, of Title III has been clarified. If the sanction of the typing provision does not expressly provide for this, a fine of between twenty-six francs/euros and two thousand francs/euros may be imposed on the offender.

F. France (Penal Code of 22 July 1992)[117]

From the point of view of the title issue, the provisions governing the legal and criminal protection of money and other legal tenders should be sought in Book IV – "Offences and misdemeanours against the Nation, the State and Public Peace", Title IV – "Breach of public trust", Chapter II – "False money".

Under the French Criminal Code, crimes that undermine the integrity of money can be divided into three categories. The first consists of types of counterfeiting or alteration of both circulating (Art. 442-1 of the F.p.c.), as well as withdrawn money (Aart. 442-3 of the F.p.c.). The second category includes behaviours that boil down to the circulation of false values (art. 442-2 of the F.p.c.) or coins or banknotes that are not legal tender (Art. 442-4 of the F.p.c.). The last category is *sui generis* preparation for the crime of counterfeiting. When conducting the analysis, the subject of consideration was also the validity of the Act from the point of view of the place of committing the offense (Aart. 113-10 of the F.p.c.), liability of legal persons (Art. 442-14 of the F.p.c.), the institution of active repentance (Art. 442-9 and 10 of the F.p.c.) and non-criminal means of criminal response provided for against perpetrators of counterfeiting (Art. 442-11, 12 and 13 of the F.p.c.). Attention should be paid

(Art. 38 sec. 2 of the Lu.p.c.). In relation to misdemeanours, it shall amount to at least one franc and shall not exceed twenty-five francs (Art. 38 sec. 1 of the Lu.p.c.). In the case of violations, the special provision may differently shape the limits of the statutory threat of a fine. It is worth noting that since 2003 the euro has replaced the Luxembourg franc.

[117] Code pénal (source: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/2021-04-20/ [access: 01.12.2022]), hereinafter referred to as F.p.c.

to the admissibility of the application of the French Penal Code in the event of committing certain offences from the above categories abroad. Pursuant to Art. 113-10 of the F.p.c., French criminal law applies to crimes and offences classified as forgery and alteration of the state seal, coins, banknotes or public instruments, punishable under Art. 442-1, 442-2, 442-5, 442-15 of the F.p.c. committed by a foreigner outside the territory of the Republic.[118]

When initiating the analysis of crimes grouped in the first category, one should start with the type from Art. 442-1 of the F.p.c. According to this provision, whoever counterfeits or converts coins or banknotes that are legal tender in France or those issued by foreign or international institutions authorized to do so, is liable to criminal prosecution. This act was penalized under the threat of a cumulative sentence of thirty years of imprisonment and a fine[119] of up to four hundred and fifty thousand euros (Art. 442-1 sec. 1 of the F.p.c.).[120] Supplementing the scope of legal and criminal protection of the currency against counterfeiting should be sought in Art. 442-1 sec. 2 of the F.p.c. The same penalty shall be imposed on anyone who produces coins or banknotes which are legal tender in France or issued by foreign or international institutions authorised to do so, using authorised installations or equipment intended for their issue. The scope of criminalisation has been narrowed down by the additional fact that the performance of the causative action is to be carried out in violation of the conditions set by the institutions authorized to issue these monetary tokens or without the consent of these institutions. The offense under Art. 442-3 of the F.p.c. must be considered an aggravated type of money counterfeiting. Pursuant to the above-mentioned provision, the liability of up to five years of imprisonment and a fine of up to seventy-five thousand euros[121] is imposed

[118] P. Chrzczonowicz, [in:] A. Adamski, J. Bojarski, P. Chrzczonowicz, M. Filar, P. Girdwoyń (red.), *Prawo karne i wymiar sprawiedliwości państw Unii Europejskiej. Wybrane zagadnienia*, Toruń 2007, p. 53.

[119] Because the type of Art. 442-1 sec. 1 of the F.p.c. constitutes a crime, the scope of the statutory threat of sanctions is included in Art. 131-1 sec. 1 of the F.p.c. A criminal penalty in the form of imprisonment or a life imprisonment may be adjudged to a natural person (section 1), or imprisonment or criminal detention for up to thirty years (sec. 2), imprisonment or criminal detention for up to twenty years (sec. 3), imprisonment or criminal detention up to fifteen years (sec. 4). At the same time, the lower limit of the statutory threat of imprisonment or custody was reserved. It is ten years (Art. 131-1 sec. 2 of the F.p.c.). The imposition of a prison or criminal detention sentence does not exclude the application of a fine and one or more additional penalties (Art. 131-2 of the F.p.c.), see Y. Mayaud, *Code Pénal*, Paris 2011, pp. 263–266; P. Chrzczonowicz, *op. cit.*, pp. 79–80.

[120] Y. Mayaud, *op. cit.*, pp. 1361–1362.

[121] The type analysed is an offence. Determining the perpetration of an offense allows for the application of a corrective penalty. The catalogue of penalties considered to be corrective is included in Art. 131-3 items 1–8 of the F.p.c. The most important ones are: imprisonment (item

on those who counterfeit or convert French or foreign coins or banknotes which are no longer legal tender or which are not allowed into circulation.

The second category includes activities that lead to the circulation of counterfeit or altered values. Attention should be paid to Art. 442-2 of the F.p.c. Pursuant to the said provision, the transport or placing on the market of coins or banknotes that are legal tender in France or those issued by foreign or international institutions authorized for this purpose or incorrectly produced monetary tokens is criminalised (Art. 442-2 sec. 1 of the F.p.c.).[122] The penalty is a ten-year prison sentence and a fine of up to one hundred and fifty thousand euros. The modified type of putting into circulation imitation money is provided for in Art. 442-2 sec. 2 of the F.p.c., which implies the threat of a thirty-year prison sentence and a fine of up to one hundred and fifty thousand euros for the perpetration of this act within an organized group.[123] The last offense included in the second category is the act under Art. 442-4 of the F.p.c. This provision is a manifestation of the criminalisation of the introduction into circulation of any unauthorised monetary tokens aimed at replacing coins or banknotes that are legal tender in France. The perpetrator is liable under penalty of five years' imprisonment and a fine of seventy-five thousand euros.

In the third category, it should be said about the type of *sui generis* preparation for and offence under Art. 442-1 of the F.p.c.[124] In accordance with Art. 442-5 of the F.p.c., a criminal penalty is imposed on anyone who produces, uses or possesses materials, instruments, computer software or any other elements specially designed to produce or protect banknotes or coins against counterfeiting. This behaviour was prohibited under the threat of two years' imprisonment and a fine of thirty thousand euros.

It is worth noting that, in addition to the liability of natural persons, liability of legal persons is also provided for.[125] This means that legal persons, excluding the State, are criminally liable for crimes committed on their behalf by their authori-

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1), social work (item 3), fine (item 4), redress (item 8), or deprivation or limitation of rights under Art. 131-6 of the F.p.c. (sec. 7), see *Ibidem*, pp. 268–270.

[122] *Ibidem*, pp. 1362–1363.

[123] Pursuant to Art. 132-71 of the F.p.c., an organized criminal group is any formed group or agreement concluded in order to prepare one or more offenses, characterized by one or more constituent elements of these offenses. "Preparation of a crime" is a set of activities aimed at facilitating further stages of the implementation of the elements of a prohibited act (e.g. scouting of places where the act is to be committed, preparation of action plans, supervision of executive perpetrators) – see J. Brzezińska, *Z problematyki przestępczości zorganizowanej w prawie francuskim*, [in:] T. Kalisz (red.), *Nowa kodyfikacja prawa karnego, t. XXXIX*, Wrocław 2016, p. 14 et seq.; P. Chrzczonowicz, *op. cit*., p. 77.

[124] P. Chrzczonowicz, *op. cit*., pp. 77–78.

[125] Pursuant to Art. 131-17 of the Fp.c. legal entities may be subject to fines and injunctions or prohibitions provided for in Art. 131-39 of the F.p.c., see P. Chrzczonowicz, *op. cit*., pp. 64–66.

ties or representatives (Art. 121-2 sec. 1 of the F.p.c.).[126] Pursuant to Art. 442-14 of the F.p.c., against legal persons found liable under general provisions, for crimes described in Chapter II, Title IV, in addition to a fine, a pecuniary penalty[127] may also be imposed, and sanctions listed in Art. 131-39 of the F.p.c.[128] and confiscation.[129]

It is also worth bearing in mind Art. 442-15 of the F.p.c. This provision is important due to the overriding nature and clarification of the scope of criminal law protection from the point of view of the carriers of the legal good, against which the act of the perpetrator may be directed. Pursuant to the above provision, the regulations of Art. 442-1, 442-2 and from Art. 442-5 to Art. 442-14 of the F.p.c. also apply when the offender's conduct is directed against banknotes and coins that, although intended to be put into circulation, have not yet been issued by authorized institutions and do not constitute legal tender.

It is worth noting the criminalisation of attempts and the inclusion of the active repentance clause. In Art. 442-8 of the F.p.c., the stage of pre-completion of certain crimes against money trading was typified.[130] According to its content, the perpetrator of the attempted crimes provided for in Art. 442-2 sec. 1 and Art. 442-3 to

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[126] Criminal liability towards local authorities, their groups and associations has been limited only to crimes committed during the performance of activities that may be entrusted to them through the delegation of tasks of a public nature (Art. 121-2 sec. 2 of the F.p.c.).

[127] The maximum fine applicable to legal persons is five times higher than the fine provided for natural persons. In the case of an offence for which no fine is foreseen for natural persons, the fine for legal persons is 1 million euro.

[128] The catalogue of penalties that can additionally be imposed on legal persons is contained in Art. 131-39 of the F.p.c. The most important include: dissolution of a legal person (item 1), permanent or timely prohibition on performing a specific professional or social activity (item 2), exclusion from participation in public procurement (item 5), prohibition on proposing the purchase or admission of securities to trading on a regulated market (item 6) and prohibition on issuing a specific type of cheques (item 7).

[129] Pursuant to Art. 131-21 of the F.p.c., confiscation may concern all property in the form of movable and immovable property, as specified in the law or regulation. Where the offence has been punishable by a term of imprisonment of at least five years and the offender has made a profit, directly or indirectly, all movable and immovable property of their own or, subject to the rights of another person, of the owner in good faith and at their disposal, shall also be confiscated if neither the sentenced person nor the owner, asked to provide explanations concerning such property, were able to justify its origin. The confiscated item, unless specifically provided for in the provisions on its destruction or return to another entitled person, shall become the property of the State. Any encumbrance of rights *in rem* established for the benefit of third parties remains in force; see Y. Mayaud, *op. cit*., pp. 281–285.

[130] The criminalisation of an attempt to commit an offence is not the rule. In accordance with Art. 121-4 of the F.p.c., an attempt to commit a crime is compulsorily prosecuted. As regards offences, the legislator must provide for the criminalisation of the form of the attempt in the form of a separate clause. Attempts occur when the offender's behaviour manifested in the commencement of enforcement has been suspended or has not occurred due to circumstances independent

442-7 of the F.p.c. is subject to a penalty within the limits of the threat provided for its commission. In the case of the active repentance clause, it is worth paying attention to two variations of it, which have different effects from the point of view of the penalty. In the first case – included in the content of Art. 442-9 of the F.p.c. – it was assumed that who attempted to commit any of the analyzed crimes, is exempt from punishment if, after prior notification to the administrative or judicial authority, they prevented the commission of the crime and made it possible, where appropriate, to identify the remaining perpetrators. Such an institution can be described as effective active repentance. The second of the regulations is included in Art. 442-10 of the F.p.c. and concerns the consequences on the basis of the penalty, from the perspective of ineffective active repentance. Pursuant to the above provision, a custodial sentence imposed on the perpetrator or accomplice of the offences described in Art. 442-1 to 442-4 is reduced by half if, after prior notification to the administrative or judicial authorities, this behaviour has made it possible to stop committing offences and to establish the identity of the remaining perpetrators.

Sanctions, which can additionally be imposed on the perpetrators of certain types of crimes, also require our reflection. In accordance with Art. 442-11 of the F.p.c., natural persons guilty of crimes referred to in Art. 442-1 to 442-6 of the F.p.c. are additionally subject to the following penalties: deprivation of civil, civil or family rights,[131] ban on holding public offices, professional or social activities[132] and prohibition of residence.[133] In addition, against a perpetrator of the offences referred to in Art. 442-1 of the F.p.c., who is a foreigner, it is permissible to issue an order to leave the territory of France permanently or for a period of up to ten years.[134]

of the subject of the crime (Art. 121-5 of the F.p.c.). For detailed considerations on the attempt, see *Ibidem*, pp. 173–185.

[131] Pursuant to Art. 131-26 of the F.p.c., deprivation of civil, civil or family rights concerns the right to: vote (item 1), exercise jurisdictional functions or act as an expert in front of a court or act as an attorney (item 3), testify, with the exception of making simple statements (item 4) and the right to be an educator or curator (item 5). The period of prohibition of the exercise of civic, civil and family rights shall not exceed ten years in the case of a conviction for a crime; and five years in the case of a conviction for an offence.

[132] A prohibition order may be made in so far as the act was committed during or in connection with the exercise of a commercial or industrial profession, the directing, administration, management or control, in any capacity whatsoever, directly or indirectly, on behalf of oneself or another person, of a commercial, industrial undertaking or a commercial company. Pursuant to Art. 131-27 of the F.p.c., the ban may be of a permanent or temporary nature. In the latter case, its period of its adjudgement shall not exceed 15 years.

[133] Pursuant to Art. 131-31 of the F.p.c., a ban on residence entails a ban on staying in places specified by the court. The period of prohibition may not exceed ten years in the case of a conviction for a crime and five years in the case of a conviction for an offence.

[134] The scope of application of the order to leave the territory of France was narrowed down by Art. 131-30 of the F.p.c., where the ban on deportation was defined. The application of the

G. Principality of Monaco (Penal Code of 28 September 1967)[135]

Relevant provisions for the title issue should be sought in Book III – "Offences and misdemeanours and their punishment", Title I – "Offences and misdemeanours against public goods", Chapter III – "Offences and misdemeanours against public peace", Section I – "Fake money".

Under the legal order of the Principality of Monaco, crimes against the unimpeded circulation of money can be classified into four categories. The first consists of acts consisting of counterfeiting coins and banknotes, which are legal tender (Art. 77 of the Mo.p.c.) and those that have lost this status (Art. 80 of the Mo.p.c.). The second category includes types consisting in releasing false values into circulation (Art. 78 sentence 1 of the Mo.p.c. and Art. 81 of the Mo.p.c.). The third category includes fencing of false values (Art. 78 sentence 2 of the Mo.p.c.). As part of the last category, the *sui generis* preparation for counterfeiting money was distinguished (Art. 82 of the Mo.p.c.).

In the scope of crimes of the first category, the analysis should cover Art. 77 of the Mo.p.c. Under that provision, criminal liability is imposed on anyone who counterfeits or converts coins or banknotes which are legal tender in the Principality. The penalty is a sentence of ten to twenty years' imprisonment[136] and the fine provided for in Art. 26 item 4 of the Mo.p.c.,[137] with upper limit of statutory penalty that may be increased twenty times or up to the amount of possible profit.[138] The same type and scope of penalty may be imposed on a person, who counterfeits or alters coins or banknotes that are a legal tender abroad. The second sentence of Art. 77 of the Mo.p.c. expands the scope of criminal law protection of the currency

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deportation penalty is excluded, *inter alia*, if the foreigner has proven that they have been a permanent resident of France for thirty years (item 1), if they have been legally in France for more than twenty years (item 2) or if they have been legally in France for more than ten years and have entered a marriage with a French citizen before committing a prohibited act (item 3).

[135] Code penal (source: https://www.legimonaco.mc/305/legismclois.nsf/ViewSommaire/5C2938D8D46C7348C12574FD004BE402! [access: 1.12.2022]), hereinafter referred to as Mo.p.c.

[136] Pursuant to Art. 15 of the Mo.p.c., the sentence of imprisonment is, depending on the cases specified in the Act, from five to ten years or from ten to twenty years. In respect of offences, a custodial sentence of not less than six days and not more than five years may be imposed, unless a special provision provides otherwise (Art. 25 of the Mo.p.c.).

[137] Art. 77 of the Mo.p.c. constitutes a *lex specialis* in relation to the regulation under Art. 6 of the Mo.p.c. A severe or defamatory penalty should in principle be life imprisonment or a custodial sentence.

[138] The statutory amount of fine is regulated in Art. 26 of the Mo.p.c. Four levels are foreseen: one thousand to two thousand two hundred and fifty euros (item 1), two thousand two hundred and fifty to nine thousand euros (item 2), nine thousand to eighteen thousand euros (item 3) and eighteen thousand to ninety thousand euros (item 4).

traded, not only to domestic money, but also to such monetary tokens that serve to redeem liabilities abroad. The type from Art. 80 of the Mo.p.c. is particularly interesting. It criminalises the counterfeiting or alteration of coins or banknotes which are no longer legal tender, both in the Principality or abroad. The above behaviour was penalized with a penalty of one to five years of imprisonment and a fine in the amount described in Art. 26 item 4 of the Mo.p.c., whose upper limit of the statutory threat may be increased to its fivefold or to the amount of the achieved profit.

The second category includes putting imitations of money into circulation. Pursuant to Art. 78 sentence 1 of the Mo.p.c., a prison sentence of five to ten years and a fine specified in Art. 26 item 4 of the Mo.p.c., whose upper limit of the statutory threat may be increased to its tenfold or the amount of profit achieved, may be adjudged to whoever puts into circulation counterfeit or altered monetary tokens referred to in Art. 77 of the Mo.p.c. The legislator also provided for an aggravated type (Art. 79 of the Mo.p.c.). The modifying element is the implementation of a crime within an organised group.[139] In such a case, the sanctions provide for a penalty of ten to twenty years of imprisonment and a fine provided for in Art. 26 point 4 of the Mo.p.c., the upper limit of which may be increased to its twenty-fold or to the amount of possible profit achieved by the perpetrator. The coherence of the system in the field of criminal law protection of the currency against imitation circulation is ensured by Art. 81 of the Mo.p.c. Under that provision, putting in circulation of any monetary tokens intended to replace coins or banknotes which are legal tender in the Principality shall be criminalised. For violation of the norm, there is a penalty of imprisonment from one to five years and a fine provided for in Art. 26 item 4 of the Mo.p.c., and the upper limit of the statutory threat may be increased to its fivefold or to the amount of the profit the perpetrator had.

The third category are acts related to fencing in of counterfeit currency. It is worth noting the type included in Art. 78 sentence 2 of the Mo.p.c. It criminalizes the transport and possession of counterfeit or altered monetary tokens described in Art. 77 of the Mo.p.c. The said act was penalized with five to ten years' imprisonment and a fine provided for in Art. 26 item 4 of the Mo.p.c., its upper limit may be increased to its tenfold or the amount of profit achieved by the perpetrator. An aggravated type is also provided for (Art. 79 of the Mo.p.c.). The modifying circumstance is the implementation of a crime within an organized group. In this case, there is a threat of a penalty of five to ten years' imprisonment and a fine provided for in Art. 26 item 4 of the Mo.p.c. the limit of which may be increased to its tenfold or the amount of profit achieved.

[139] Pursuant to Art. 392-2 of the Mo.p.c., an organized group should be understood as a group or any agreement established to prepare one or more offenses.

The last category is *sui generis* preparation for the crime of money counterfeiting. They are included in the content of Art. 82 of the Mo.p.c. Pursuant to the above provision, criminal liability is imposed on anyone who manufactures, uses or possesses, without appropriate administrative permission, instruments, computer software or any other elements specially designed to manufacture or protect coins or banknotes against counterfeiting or altering. The Act is prohibited under the penalty of imprisonment from one to two years and a fine provided for in Art. 26 item 4 of the Mo.p.c.

It is also worth noting a few specific issues. These include: criminal liability of legal persons, issues of stage forms and active repentance, and other means of legal and criminal response to perpetrators of counterfeiting. In order to be precise, it should be pointed out that the legal order of Monaco provides for criminal liability of legal persons. Pursuant to Art. 4-4 sec. 1 of the Mo.p.c., each legal person – with the exception of the State, municipality and public institutions – bears criminal liability as a perpetrator or an accomplice for any criminal offense or misdemeanor if it was committed on its behalf by one of its authorities or representatives. Details of the aforementioned regulation in relation to the title issue can be found in Art. 83-2 of the Mo.p.c. Pursuant to the above provision, a legal person who, through carelessness, negligence or failure to comply with the obligation of control or supervision, does not take measures to avoid committing one of the offences provided for in Art. 77 to 81-1 of the Mo.p.c, shall be held liable. In such a case, a sanction[140] in the form of a fine provided for in Art. 26 item 3 of the Mo.p.c. is envisaged.

It is also worth paying attention to the criminalisation of the incomplete forms of most crimes against currency.[141] Pursuant to Art. 83-3 of the Mo.p.c., the perpetrator of the attempted crimes provided for in this Title – with the exception of Art. 83-2 of the Mo.p.c. – is subject to a penalty provided for as for the respective offense. The institution of active repentance, which is described in Art. 85-3 of the Mo.p.c., requires further commentary, due to its dual nature. Pursuant to sec. 1 of the said provision, who attempts to commit any of the offences provided for in this Section,

[140] The following sanctions may be imposed on legal persons. Firstly, the fine referred to in Aart. 29-2 of the Mo.p.c. Secondly, the penalties or prohibitions provided for in Art. 29-3 and 29-4 of the Mo.p.c. The most important include the dissolution of a legal person (Art. 29-3 of the Mo.p.c.) insofar as it was created for the purpose of committing a given crime or was used for the implementation of the crime. Among the additional penalties, a ban on conducting activities of a specific type may also be imposed (Art. 29-4 item 1 of the Mo.p.c.), court supervision for a period not exceeding five years (Art. 29-4 item 2 of the Mo.p.c.), permanent or temporary exclusion from participation in public procurement (Art. 29-4 item 4 of the Mo.p.c.), or confiscation of items that served or were intended to commit a prohibited act (Art. 29-4 item 7 of the Mo.p.c.).

[141] Pursuant to Art. 3 of the Mo.p.c., the attempt to commit a crime is subject to criminalisation only in cases specified by a special provision. An attempted crime is considered to be the disclosure of the offender's behaviour by commencing its implementation, if it was suspended or did not take place due to circumstances independent of the perpetrator (Art. 2 of the Mo.p.c.).

is exempt from punishment if, before committing it, they disclosed to the administrative or judicial authorities the perpetrators or accomplices, and these authorities became aware of it. The regulation of Art. 85-3 sentence 1 of the Mo.p.c., establishes a circumstance that excludes the punishability of the perpetrator of the attempt. In the next editorial unit of the legal text – Art. 85-3 sentence 2 of the Mo.p.c. – we read that the sentence of imprisonment imposed against the person found guilty of committing the offences provided for in Art. 77 to 81 of the Mo.p.c. is reduced by half if, after notifying the administrative or judicial authorities, it allowed to stop committing offences and to detect their perpetrators. The above-mentioned regulation constitutes an institution of punishment, affecting, on the one hand, the reduction of lawlessness of the perpetrator's behaviour, and, on the other hand, a real threat of sanction. Oscillating around the issue of the penalty, it is worth signalling the issue of recidivism under Art. 83-4 of the Mo.p.c. The provision provides that where the offender is criminally liable for one of the offences described in Art. 77 to 83-2 of the Mo.p.c., they shall be deemed to have acted under the conditions of recidivism if they have been previously convicted by a criminal court of a Member State of the Council of Europe of an offence having the same character.

As part of the statutory threat, it is necessary to mention the sanctions provided for in Art. 83-7 of the Mo.p.c. Interestingly, some of them are obligatory, in addition to the sanction provided for in the typifying provision. First, any natural person convicted of one of the offences provided for in Art. 78, 80 to 83 and 83-3 of the Mo.p.c. shall also be subject to deprivation of civil, civil or family rights on the terms specified in Art. 27 of the Mo.p.c.[142] The deprivation or limitation of the rights provided for in that provision is a cumulative sanction in addition to the statutory threat of a penalty provided for in the sanction. The other two measures are optional. A foreign national found guilty of one of the offences provided for in the Section under consideration may be subject to a ban on residence on the territory of Monaco on a permanent basis or for a period of up to ten years. The third is the penalty of deportation from the Principality. Pursuant to the contents of Art. 83-7 sentence 3 of the Mo.p.c., a foreigner found guilty of committing one of the offences provided for in this Section may be subject to the penalty of deportation with a ban on return permanently or for a period of up to ten years.

[142] Pursuant to Art. 27 of the Mo.p.c. the court may prohibit, *inter alia*, in whole or in part, the execution of the following civil, civil and family rights: active and passive electoral law (item 1), the right to hold public functions or administrative positions (item 2), the right to acquire, possess, carry or transport weapons and the possibility of obtaining a permit (item 3), loss of the right to be a guardian, curator or judicial attorney (item 5).

H. Principality of Andorra (New Penal Code of 21 February 2005)[143]

Relevant to the consideration of the criminal law protection of money, securities and other legal tenders in Andorra, are the provisions found in Book II – "Offences", Title XXIII – "Offences against security of legal transactions", Chapter I – "Counterfeiting of money and seals", Section I – "Counterfeiting of money".

Crimes interfering with the monetary order in the Andorran area should be divided into three categories. The first is counterfeiting (Art. 431 sec. 1 letter a of the An.p.c.) or altering (Art. 431 sec. 1 letter b of the An.p.c.) of the national or foreign currency. The second includes the crime of circulating false values (Art. 431 sec. 1 letter c of the An.p.c. and Art. 432 sec. 2 of the An.p.c.). Within the third category, it is necessary to indicate Art. 432 of the An.p.c., which regulates the preparation for the counterfeiting of money. The subject of considerations was the legal definition of the currency, contained in Art. 430 sec. 1–3 of the An.p.c. and interpretation of aggravated types of the above offences.

Analyses of these crimes should be preceded by a reflection on the definition of legal currency. "Currency" means metal and paper money, which is a legal tender in the Principality of Andorra or in any other foreign country (Art. 430 sec. 1 of the An.p.c.). In addition, domestic and foreign credit securities with a property value, which, in accordance with applicable law, must be issued in writing, on specially designed prints, in order to prevent or hinder their falsification (Art. 430 sec. 2 of the An.p.c.). Within the meaning of Art. 430 sec. 3 of the An.p.c., also credit or debit cards and traveler's cheques constitute currency. It was necessary to make these observations and to proceed to the main part of the considerations.

Attention should be paid to Art. 431 sec. 1 letter a of the An.p.c. This provision typifies[144] under penalty of three to five years' imprisonment and a fine[145] in the

143 Nouveau Code Pénal, Loi organique nº9/2005 du 21 février 2005 (source: http://www.derechos.org/intlaw/doc/and1.html [access: 1.12.2022]), hereinafter referred to as An.p.c.

144 Pursuant to Art. 12 of the An.p.c., criminal offences are divided, depending on their gravity, into serious offences, minor offences and criminal misdemeanors. Serious offences are those in which at least one penalty has been imposed, the upper limit of which exceeds the values included in Art. 36 of the An.p.c. (penalties provided for perpetrators of minor offences). With regard to minor offences, the lower limit of the sanction is determined by exceeding the threat provided for in Art. 37 of the An.p.c., i.e. for criminal misdemeanors. Criminal misdemeanors are those listed in Book III of the Code.

145 Taking into account the fact that Art. 431 sec. 1 letters a–c of the An.p.c. typifies prohibited acts classified as serious crimes, further comments will be limited only to the scope of penalties in the event of committing this category of behaviour. In the case of serious crimes, the catalogue of sanctions is included in Art. 35 of the An.p.c. The provision specifies: imprisonment for up to twenty-five years, taking into account exceptions relating to the issue of the cumulation of penalties and sanctions imposed for crimes of genocide and crimes against humanity (sec. 1); a fine

amount of up to three times the value of counterfeit currency, for the offense of unlawfully counterfeiting money to put it into circulation. When interpreting the above offence, it should be borne in mind that inauthentic currency is also considered to be the one that was created in legal plants or from legal materials, but without appropriate permits to carry out the issue. The second offence included in the analyzed category is the type described in Art. 431 sec. 1 letter b of the An.p.c. According to its content whoever, in order to put into circulation, reprocesses the issued currency, changing its visible value or removing the sign of removal from circulation, is liable to a penalty of imprisonment of three to five years and a fine of up to three times the value of a counterfeit currency. It is worth noting that in relation to both types, the stage preceding the execution is also criminalised.[146] A modified type of money counterfeiting is also foreseen. Pursuant to Art. 431 sec. 3 of the An.p.c., the circumstances aggravating the type, implying a cumulative threat of imprisonment of five to eight years and a fine of up to six times the value of the counterfeit currency, are found when the perpetrator belongs to an organization/criminal group dealing with counterfeiting or trading in an inauthentic currency (letter a); when the perpetrator has made a permanent profession of a counterfeiting currency (letter b) or when the amount of inauthentic currency will be sufficient to destabilize the economic system of the country (letter c).

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of up to three hundred thousand euros or up to four times the profit – depending on which of these amounts is higher – unless a special provision explicitly indicates a higher amount of the fine (sec. 2); deprivation of public rights, rights to hold public offices, exercise of family rights, profession or position for a period of up to twenty years, except in cases concerning the cumulation of penalties (sec. 3) and the ban on cooperating with the public administration for a period of 20 years (sec. 5). They may, in addition to the sanction provided for in Art. 35 of the An.p.c., also adjudge the temporary or permanent deportation of a foreigner from the territory of Andorra or the withdrawal of a gun permit, hunting license or fishing license for a period of two years (Art. 38 sec. 1 of the An.p.c.). It is permissible to adjudicate on a number of measures indicated in Art. 38 sec. 2 letters a–e of the An.p.c.

[146] An attempt is made when the subject directly initiates the implementation of a crime through external actions, performing all or part of them, which should objectively have an effect, and yet the crime does not occur for reasons independent of the will of the perpetrator (Art. 17 sec. 1 of the An.p.c.). It is worth referring to the active repentance clause in Art. 17 sec. 2 and 3 of the An.p.c. The perpetrator is released from criminal liability if they voluntarily evaded the offence, either by resigning from the commenced execution of the offence, or by preventing or trying to prevent the occurrence of its effect. The waiver of liability for the act, the implementation of which has been resigned, is without prejudice to the liability that the perpetrator could have incurred for the actions performed if they were to constitute another offense (Art. 17 sec. 2 of the An.p.c.). As for the attempted crime committed as part of criminal cooperation, if several subjects are involved in the commission of an act, the subject or subjects that withdrew from the already commenced performance remain exempt from criminal liability, provided that they could not personally prevent the act from being committed (Art. 17 sec. 3 of the An.p.c.).

We should start our analysis of the second category of crimes by focusing on Art. 431 sec. 1 letter c of the An.p.c. A penalty of imprisonment of three to five years and a fine of up to three times the value of a counterfeit currency is imposed on anyone who, knowing the non-authenticity of the currency received, circulates it. Also in this case, the attempt to commit this crime is criminalised. The second provision that typifies the marketing of currency imitation is Art. 431 sec. 2 of the An.p.c. A cumulative custodial sentence of between three months and three years and a fine equivalent to twice the amount of the counterfeit currency shall be imposed on the person who, having received the currency with knowledge of its non-authenticity, possesses it for the purpose of putting it into circulation (letter a) and who, having knowledge of the non-authenticity of the currency, after having received it, introduces it into the territory of Andorra for the purpose of putting it into circulation. In the case of placing a counterfeit on the market, an analogous aggravated type is provided for as for the counterfeiting.

The type belonging to the last category is preparation for currency counterfeiting. Pursuant to Art. 432 of the An.p.c., the production, transfer, sale or possession of instruments, materials, substances, machines, computer software, devices or other tools specifically designed to counterfeit money is criminalized. In such a case, the perpetrator is liable to imprisonment for up to two years,[147] provided that the commission of the offense may pose a threat to the circulation of money.

I. Kingdom of Spain (Penal Code of 23 November 1995)[148]

Provisions typifying offenses against trading in money, securities or other legal tenders should be sought in Book II – "Crimes and their penalties", Title XVIII – "On counterfeiting", Chapters I – "Counterfeiting of currency and stamp paper", III – "Counterfeiting of certificates" and IV – "Counterfeiting of credit and debit cards and travellers' cheques".

The offences under consideration can be divided into four categories. The first is made of types consisting in the counterfeiting of the currency (Art. 386 sec. 1 point 1

[147] Preparation for currency counterfeiting is a minor offence. The catalogue of sanctions can be found in Art. 36 sec. 1 items 1–14 of the An.p.c. Among the different types of penalty we find: imprisonment for up to two years (item 1); house arrest (item 3); a fine of up to sixty thousand euros or up to three times the profit from the crime – whichever is higher (item 5); social work for a period not exceeding a year (item 6); a ban on exercising public rights, holding public positions, family rights, exercising a profession or holding a position for up to six years (item 7) or the withdrawal of driving permit (item 9).

[148] Código Penal, Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (source: https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444 [access: 1.12.2022]), hereinafter referred to as Sp.p.c.

of the Sp.p.c.) or other legal tenders (Art. 399bis sec. 1 sentence 1 of the Sp.p.c.). The second should include the marketing of counterfeit currency (Art. 386 sec. 1 point 1 of the Sp.p.c. and Art. 286 sec. 1 point 3 of the Sp.p.c.). It is interesting to consider the Spanish legislator's approach to criminalizing fencing behaviour, including the possession of counterfeit money (Art. 386 sec. 2 of the Sp.p.c.) or payment cards (Art. 399bis sec. 2 of the Sp.p.c.) in order to put them into circulation. As part of the last category, it is necessary to distinguish the type consisting in the implementation of preparatory activities for currency counterfeiting (Art. 400 of the Sp.p.c.). The subject of the analyses will also be the liability of legal persons and sanctions adjudicated in addition to the penalty indicated in the typing provision.

The definition of the terms "currency" and "counterfeit currency" also requires our reflection. These formulations were defined and their determination was made in Art. 387 of the Sp.p.c. Pursuant to Art. 387 sec. 1 of the Sp.p.c., currency means metallic currency and paper money, which is a legal tender and what has not yet been issued or put into circulation, but which is intended as a legal tender. A significant reservation was made that the currencies of other countries of the European Union and other countries were guaranteed uniform protection in the territory of Spain. In accordance with Art. 387 sec. 2 of the Sp.p.c., it is assumed that a counterfeit currency is also one that, although it was produced in state plants and from legal materials, it was created in violation of the emission conditions specified by the competent authorities or in the absence of an order to carry out such an issue.

Attention should be paid to the type described in Art. 386 sec. 1 item 1 of the Sp.p.c.[149] Under that provision, the penalty[150] of eight to twelve years' imprison-

[149] It is worth noting the triad of acts prohibited under penalty. In accordance with Art. 13 of the Sp.p.c., the category of crimes can be divided into: serious, less serious and minor crimes, cf. B. Kunicka-Michalska, *Przestępstwo i „falta" w Kodeksie Karnym Hiszpanii*, [in:] T. Bojarski (red.), *Rozwój nauk penalnych w sześćdziesięcioleciu Wydziału Prawa i Administracji UMCS*, Lublin 2009, p. 116; eadem, *Zarys prawa karnego Hiszpanii*, Warszawa 2009, pp. 125–126. Serious crimes is a category for the implementation of which the legislator provides for a severe penalty (sec. 1). Less serious crimes are those for which a less severe punishment was provided (sec. 2). A minor offence is an act that has been threatened with a minor sanction (sec. 3). In accordance with Art. 13 sec. 4 of the Sp.p.c., if a given sanction, due to its size, can be classified at the same time as severe and less severe, in each case it should be assumed that it is a severe sanction. The opposite relationship can be seen in the case of relation of a less severe penalty, to less serious sanctions. When the penalty allows to treat the sanction as both less severe and minor, the penalty should be considered to be less severe.

[150] The analyzed types constitute serious crimes (or the interpretative rule under Art. 13 sec. 4 of the Sp.p.c., orders them to treat them as such). In the wording of Art. 33 sec. 2 letters a–k of the Sp.p.c., we find the catalogue of penalties provided for perpetrators of serious crimes. Severe penalties include, among others: life imprisonment (letter a); imprisonment exceeding five years (letter b); suspension of public office for a period exceeding five years (letter e); deprivation of the right to drive motor vehicles for a period of over eight years (item f); prohibition of

ment[151] and a fine[152] of up to ten times the value of the counterfeit currency is to be imposed on anyone who changes or counterfeits the currency.[153] Complementing criminal law is the protection covering attacks against legal tenders that constitute an offense described in Art. 399bis sec. 1 sentence 1 of the Sp.p.c. According to its content, it is criminalized to change, copy, reproduce or counterfeit credit cards, debit cards or travellers' cheques in any other way. The execution of elements of the type was forbidden under penalty and sanctioned with a sentence of four to eight years

approaching the victim, members of their family or other persons specified in the court decision for a period exceeding five years (item i), or prohibition of contact with a similar circle of entities (item j); see J. Cerezo Mir, *Reflexiones críticas sobre algunas manifestaciones de la moderna tendencia a incrementar el rigor en la exegencia de resposabilidad criminal*, "Revista Penal" 2008, Nº 22, pp. 16–21; B. Kunicka-Michalska, *Kary i środki zabezpieczające w nowym kodeksie karnym Hiszpanii*, [in:] A. Szwarc (red.), *Rozważania o prawie karnym. Księga pamiątkowa z okazji siedemdziesięciolecia urodzin Profesora Aleksandra Ratajczaka*, Poznań 1999, pp. 195–203; eadem, *Kodeks karny Hiszpanii. Charakterystyka ogólna*, [in:] A. Łopatka, B. Kunicka-Michalska, S. Kiewlicz (red.), *Prawo, społeczeństwo, jednostka. Księga Jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu*, Warszawa 2003, pp. 356–370; eadem, *Reforma kodeksu karnego w Hiszpanii*, „PiP" 2004, z. 5, pp. 49–58; eadem, *Zarys…*, *op. cit.*, pp. 145–146. It is worth noting the abolition of the so-called weekend custody penalty. According to the then legislation (former Art. 37 sec. 1 of the Sp.p.c.), the detention at the end of the week could last thirty-six hours and is equivalent to two days' imprisonment. It was carried out in a penitentiary facility closest to the place of residence of the convicted person, on Fridays, Saturdays or Sundays (former Art. 37 sec. 2 of the Sp.p.c.). The maximum term of weekend detention was 24 hours. However, this value did not apply in the case of treating the sentence of weekend detention as a substitute penalty, see M. Polaino Navarrete, *La reforma penal espanola de 2003. Una valoración critica*, Madrid 2004, pp. 69–70; J.L. de Castro Antonio, *Posibles causas que condujeron al fracaso de la pena de arresto de fin de semana en el Derecho espanol*, "La Ley Penal" 2005, no. 21, pp. 26–37; L. Tyszkiewicz, *Dwie próby ograniczenia impasu w polityce karnej*, „PiP" 2007, z. 7, pp. 13–14; B. Kunicka-Michalska, *Kara aresztu w końcu tygodnia w Kodeksie Karnym Hiszpanii i jej zmienne losy*, [in:] Ł. Pohl (red.), *Aktualne problemy prawa karnego. Księga pamiątkowa z okazji Jubileuszu 70. urodzin Profesora Andrzeja J. Szwarca*, Poznań 2009, pp. 315–325; eadem, *Reforma…*, *op. cit.*, p. 51; eadem, *Zarys…*, *op. cit.*, pp. 147–152.

151 Pursuant to Art. 36 sec. 2 of the Sp.p.c., a term of imprisonment is imposed from three months to twenty years. However, a special provision may specify both a lower and a higher limit of the statutory penalty differently.

152 The fine is a monetary penalty, imposed in the daily rate system, unless a special provision provides otherwise (Art. 50 sec. 1 and 2 of the Sp.p.c.). The fine against natural persons ranges from ten days to two years. The daily rate is not less than two Euros, nor can it exceed four hundred euros. On the other hand, it may be imposed on legal persons for a maximum period of five years at a rate ranging from thirty to five thousand euros (Art. 50 sec. 3 and 4 of the Sp.p.c.). For detailed considerations devoted to the penalty of fines see, B. Kunicka-Michalska, *Zarys…*, *op. cit.*, pp. 156–158.

153 Sentencia del Tribunal Supremo de 12 de enero de 2017. Nº de Resolución 991/2016, STS 47/2017, https://www.poderjudicial.es/search/openDocument/f455aa463ea4e788 [access: 1.12.2022]; Sentencia del Tribunal Supremo de 5 de marzo de 2019. Nº de Resolución 112/2019, STS 680/2019, https://www.poderjudicial.es/search/openDocument/f836aed998617990 [access: 1.12.2022].

of imprisonment. The element implying the extent of the penalty up to the upper limit of the statutory threat is the fact that the act of perpetration concerns bearer legal tenders or when the act was committed within the framework of a criminal organization engaged in counterfeiting activities.

The second category includes the introduction to trading of counterfeit values.[154] Attention should be paid to the type of Art. 386 sec. 1 item 2 of the Sp.p.c. On its basis, whoever exports or imports into Spain or another Member State of the European Union counterfeit or converted currency, shall be liable to prosecution. This behaviour was penalized under the threat of imprisonment of eight to twelve years and a fine of ten times the value of the counterfeit currency. In addition, on the basis of Art. 386 sec. 1 item 3 of the Sp.p.c., it is a criminal act to transport, sell or distribute counterfeit or processed currency if the perpetrator knew about its inauthenticity. In such a case, the offender is cumulatively liable to imprisonment for eight to twelve years and a fine corresponding to ten times the value of the counterfeit currency. It is worth noting that if a counterfeit currency is put into circulation, it raises the need to impose a penalty above half of the statutory threat (Art. 386 sec. 2 sentence 1 of the Sp.p.c.).

Within the third category, it is necessary to indicate Art. 386 sec. 2 sentence 2 of the Sp.p.c. Its content typifies the possession, receipt or acquisition of a counterfeit currency for the purpose of sending, distributing or putting it into circulation. Interestingly, the perpetrator of the crime is punishable by one or two degrees less, depending on the value of the currency and the degree of cooperation with the counterfeiter, marketer or exporter.[155] Pursuant to the contents of Art. 399bis sec. 2 of the Sp.p.c.

[154] Sentencia del Tribunal Supremo de 28 de mayo de 2020. Nº de Resolución: 254/2020, STS 2089/2020, https://www.poderjudicial.es/search/openDocument/2661d14994219447 [access: 1.12.2022].

[155] The degree of cooperation of the perpetrator with other entities is a circumstance affecting the punishment. In accordance with Art. 27 of the Sp.p.c., the perpetrators and accomplices are held liable for the crimes committed. The definition of accessorial liability for the crime takes place in Art. 28 Sp.p.c. The perpetrators are those who perform the act independently, jointly or through another person whom they use as a tool (sec. 1). The perpetrators are also those who directly induce another person or other persons to perform the prohibited act (sec. 2 letter a) and those who cooperate in the performance of the offense by an action without which it would not have been possible (sec. 2 letter b) see Sentencia del Tribunal Supremo de 24 de noviembre de 2015. Nº de Resolución: 723/2015, STS 5073/2015, https://www.poderju dicial.es/search/openDocument/262a8c3e26918afd [access: 1.12.2022]; Sentencia del Tribunal Supremo de 12 de febrero de 2019. Nº de Resolución: 75/2019, STS 464/2019, https://www.poderjudicial.es/search/openDocument/6ba9fc49820e7a38 [access: 1.12.2022]. Within the meaning of Art. 29 of the Sp.p.c., co-participants are those who, without falling within the scope of Art. 28 of the Sp.p.c. cooperate in the performance of the act by previous or simultaneous actions, see Sentencia del Tribunal Supremo de 15 de diciembre de 2013. Nº de Resolución: 952/2013, STS 5863/2013, https://www.poderjudicial.es/search/openDocument/ff9318dfd28c7ddb [access: 1.12.2022]; Sentencia del

who, for the purpose of further distribution or trade, has counterfeited or altered credit cards, debit cards or travellers' cheques, is liable to prosecution. The implementation of the elements of this type was threatened with a sanction as for counterfeiting.

The last category includes the act under Art. 400 of the Sp.p.c., i.e. *sui generis* preparation for counterfeiting currency, securities and other legal tenders.[156] Pursuant to the above provision, the production, receipt, acquisition or possession of tools, materials, instruments, substances, data and computer software, apparatus, security elements of currency, securities or other means intended specifically for the commission of the crimes described in Chapters I, III and IV, Title XVIII is criminalised. The scope of sanctions for the implementation of preparation for individual offences was related to the penalty provided for a given type of offense.

It is worth noting the responsibility of collective entities, which is a kind of novelty in the criminal law regulations of Spain,[157] originally stemming from the responsibility of persons acting as a body of a legal person or its representative.[158] Pursuant to Art. 386 sec. 4 of the Sp.p.c., if the perpetrator of the offences described in this article is a member – even temporarily – of a company, organization or association and engages in its activities, the court may impose, on this entity, one or more of the consequences provided for in Art. 129 of the Sp.p.c.[159] If a collective entity is responsible for one of

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Tribunal Supremo de 15 de diciembre de 2014. Nº de Resolución: 881/2014, STS 5753/2014, https://www.poderjudicial.es/search/openDocument/481767831d364ab2 [access: 1.12.2022]; Sentencia del Tribunal Supremo de 4 de octubre de 2016. Nº de Resolución: 10199/2016, STS 4268/2016, https://www.poderjudicial.es/search/openDocument/6c06636e0796f7a 2 [access: 1.12.2022]; Sentencia del Tribunal Supremo de 14 de octubre de 2019. Nº de Resolución: 482/2019, STS 3210/2019, https://www.poderjudicial.es/search/openDocument/2987356db9aa8d44 [access: 1.12.2022]; cf. B. Kunicka-Michalska, *Zarys…*, *op. cit.*, p. 132, who assumes that the entities covered by the content of Art. 29 of the Sp.p.c. should be considered as aiders, although the translation of the element *cómplices* would rather indicate an accomplice.

156 Sentencia del Tribunal Supremo de 19 de mayo de 2020. Nº de Resolución: 163/2020, STS 1288/2020, https://www.poderjudicial.es/search/openDocument/cbb0186cb14e7bd7 [access: 1.12.2022].

157 S. Tosza, W. Wróbel, *Odpowiedzialność podmiotów zbiorowych w hiszpańskim i polskim prawie karnym*, [in:] J. Jakubowska-Hara, C. Nowak, J. Skupiński (red.), *Reforma prawa karnego. Propozycje i komentarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej*, Warszawa 2008, pp. 620–632; B. Kunicka-Michalska, *Zarys…*, *op. cit.*, pp. 201–203.

158 B. Kunicka-Michalska, *Koncepcja „działania za kogoś innego" w niektórych obcych kodeksach karnych (odpowiedzialność organów i reprezentantów ciał kolektywnych)*, [in:] L. Tyszkieiwcz (red.), *Problemy nauk penalnych. Prace ofiarowane Pani Profesor Oktawii Górniok*, Katowice 1996, pp. 100–110; eadem, *Zarys…*, *op. cit.*, pp. 134–135.

159 Pursuant to Art. 129 sec. 1 of the Sp.p.c., in relation to a collective entity the court may impose one or more of the consequences described in Art. 33 sec. 7 letters c–g of the Sp.p.c. that are to correspond to the sanction imposed on the perpetrator, in the case of crimes committed within, with the participation of or through companies, organizations, groups or any other entities that, due to the lack of legal personality, are not covered by the contents of Art. 31bis of the Sp.p.c. It was

the above crimes, a fine of three to ten times the value of a counterfeit currency is imposed (Art. 386 sec. 5 of the Sp.p.c.). In addition, the court may impose the penalties provided for in Art. 33 sec. 7 letters b–g of the Sp.p.c.[160]

J. Portugal (Penal Code of 1 October 1995)[161]

Provisions typifying crimes interfering with the regularity of trading in money, securities and other legal tenders in Portugal should be sought in Book II – "Special Part", Title IV – "On crimes against life in society", Chapter II – "Offences related to counterfeiting", Section III – "Counterfeiting of currency, securities and stamped securities".

decided that it was necessary to provide for the so-called liability clause of collective entities (Art. 129 sec. 2 of the Sp.p.c.). In this context, attention should be paid to Art. 31bis sec. 1 of the Sp.p.c., which provides for the conditions for the admissibility of criminal liability of collective entities. Collective entities may be held liable when: the offence is committed on their behalf or for their benefit and directly or indirectly for the purpose of obtaining a financial benefit by their legal representatives or by persons who, acting individually or as members of a body of a legal person, are entitled to make decisions on behalf of that legal person or hold organizational and control powers in that legal person (sec. 1 letter a); or when the offence has been committed on their behalf or for their benefit, directly or indirectly for the purpose of obtaining a financial benefit by persons who, under the authority of natural persons pursuant to Art. 31bis sec. 1 item 1 of the Sp.p.c. may have committed these acts due to a serious breach of obligations in the scope of supervision, monitoring or control of their activities (sec. 1 letter b). It is necessary to signal a fairly casuistic approach to the circumstances waiving the penalization of a legal person, as provided for in Art. 31bis sec. 2 of the Sp.p.c. The most interesting include the implementation by the management body of organizational models and management models, which were defined on the basis of Art. 31bis sec. 5 of the Sp.p.c., i.e. such regulations that, among others, specify the types of activities in which crimes may be committed that should be prevented (item 1); shape the protocol or procedure defining the expression of the will of a legal person, making decisions by the management body and the manner of its implementation (item 2) or impose the obligation to report any irregularities, threats and non-compliances to the authority that supervises the functioning and compliance of the model (item 4).

160 The catalogue of penalties against collective entities is included in Art. 33 sec. 7 letters a–g of the Sp.p.c. The sanctions are: a fine (letter a), dissolution of a legal person that results in a definitive loss of legal personality and lack of legal capacity to conduct business (letter b), suspension of activities for a period not longer than five years (letter c), closure of premises and establishments of a collective entity for up to five years (letter d), prohibition on conducting a specific economic activity permanently or for up to fifteen years (letter e), deprivation of the right to receive subsidies and public aid, conclude contracts with the public sector and the use of tax concessions and incentives or social security scheme, for a period not exceeding fifteen years (letter f) or judicial supervision to protect workers' rights for a period not exceeding five years (letter g).

161 Código Penal, Decreto-Lei n.º 48/95, Retificado pelo/a Declaração de Rectificação n.º 73-A/95 – Diário da República n.º 136/1995, 1º Suplemento, Série I-A de 1995-06-14, em vigor a partir de 1995-10-01 (source: https://dre.pt/legislacao-consolidada/-/lc/107981223/201708230100/indice [access: 1.12.2022]), hereinafter referred to as the Po.p.c.

Under the Portuguese legal order, the offences can be classified into four categories. As part of the first, distinguish falsification, i.e. counterfeiting of currency, securities or other legal tenders (Art. 262 sec. 1 of the Po.p.c.) and two types of altering (Art. 262 sec. 2 and Art. 263 of the Po.p.c.). The second includes crimes consisting in circulating false values (Art. 264 and 265 of the Po.p.c.). The third category consists of acts related to fencing imitations (Art. 266 of the Po.p.c.). The last one is the preparation for counterfeiting or altering of the currency (Art. 271 of the Po.p.c.).

Attention should be paid to the rules of the law regarding the place and persons. In the scope of the first of the above, it is necessary to signal the existence of an exception to the principle of territoriality of the criminal law, which is included in Art. 5 sec. 1 letter a of the Po.p.c. Pursuant to the above provision, unless an international treaty or convention provides otherwise, Portuguese criminal law applies to acts committed outside the territory of Portugal, including, *inter alia*, the implementation of elements of the types described in Art. 261–271 of the Po.p.c. In the scope of the criminal law as regards persons, attention should be paid to Art. 11 sec. 1 of the Po.p.c., which establishes the principle of equal liability of perpetrators who are natural persons and collective entities.[162] It is important to narrow the scope of responsibility, constituting a break from the general regulations provided for in Art. 11 sec. 2 letters a and b of the Po.p.c. Legal persons and other similar entities (excluding the State Treasury, state legal persons and international organizations) may be held liable, among others for offences included in the provisions of Art. 262 to 283 of the Po.p.c. if at least one of the conditions enabling it is met. The first states that the offence was committed on their behalf and for their benefit by a person holding a managerial position (letter a). The second concerns the fact that the crime was committed as a result of the behaviour of any other person acting under the authority of the entity described in Art. 11 sec. 2 letter a of the Po.p.c., as a result of their failure to perform supervision or control duties (letter b).

In order to analyse the various types of offences, it should be noted that Portuguese law also defines the term "currency". The legal definition should be sought in Art. 255 (d) of the Po.p.c. According to the above provision, currency should also be understood as paper money, including banknotes and metal money, which is or is to

[162] It is assumed that the body or representative of a legal person is an entity that is entitled to exercise control over its activities, taking a leading position (Art. 11 sec. 4 of the Po.p.c.). Persons occupying managerial positions are subsidiarily liable for the payment of a fine or compensation that has been imposed on a collective entity for an offence committed during their holding of position in this entity (Art. 11 sec. 9 letter a of the Po.p.c.). If several people are responsible, it is of a solidarity nature (Art. 11 sec. 10 of the Po.p.c.). The liability of a collective entity is excluded if the attorney acted contrary to an explicit order or instruction issued by the competent authority of the represented entity (Art. 11 sec. 6 of the Po.p.c.). Pursuant to Art. 11 sec. 5 of the Po.p.c., civil law partnerships and associations should also be deemed to be legal persons.

be a legal tender in Portugal or abroad. Importantly, the currency is also money that has lost its status as a legal tender at home or abroad, but has exercised it for the last twenty years since the commission of the offence. For the sake of clarity, attention should be paid to the criminal law protection of securities and other legal tenders traded that is equal to that enjoyed by domestic and foreign currency. Pursuant to the contents of Art. 267 of the Po.p.c., for the purposes of Art. 262–266 of the Po.p.c., domestic and foreign debt securities that have been legally issued in paper version, with a specially designed form to protect against counterfeiting (letter a); domestic lottery tickets and shares in them (letter b) and bank guarantees or credit cards (letter c) are deemed equivalent to currency. Importantly, this does not apply to the object of causative actions for guarantee or identification where no paper or printed documentary form is foreseen for the issuance conditions.

Under the first category, we will analyse the offence under Art. 262 sec. 1 of the Po.p.c. Pursuant to the above provision, whoever counterfeits currency with the intention of putting it into circulation is liable to prosecution. Violation of this norm was threatened with imprisonment for three to twelve years.[163] Pursuant to Art. 262 sec. 2 of the Po.p.c., a person who alters the nominal value of a legal tender into a higher one for the purpose of marketing, shall be liable to a penalty of two to eight years' imprisonment. The type of altering from Art. 263 sec. 1 of the Po.p.c. shall be deemed interesting. Who, in order to put into circulation as worthless, depreciates legal coins, reducing their value in any way, is liable to prosecution. In the case of implementation of elements of this type, a prison sentence of up to two years and a fine of up to two hundred and forty days were provided for.[164] The same penalty is imposed on anyone who, without the required permission and with the intention of transferring or placing on the market, produces coins with the same or higher nominal value than the authentic currency (Art. 263 sec. 2 of the Po.p.c.). Pursuant to Art. 263 sec. 3 of the Po.p.c., an attempt[165] is also criminalised.

[163] Pursuant to Art. 41 sec. 1 of the Po.p.c., a sentence of imprisonment is imposed for one month to twenty years. In special cases, a prison sentence of up to twenty-five years may be imposed (Art. 41 sec. 2 of the Po.p.c.).

[164] Pursuant to Art. 47 sec. 1 of the Po.p.c., the fine adjudged in days, with the lower limit of the statutory threat being ten days, while the upper limit is three hundred and sixty days. Every day of the fine corresponds to an amount of between five and five hundred euros, the amount of which is determined by the court taking the economic and financial situation of the perpetrator and their personal expenses into account (Art. 47 sec. 2 of the Po.p.c.).

[165] Attempt is defined in Art. 22 of the Po.p.c. and takes place when the perpetrator takes actions to perform the offense, and this offense is not completed (sec. 1). The criminality of attempted crime is not the rule. Unless a special provision provides otherwise, an attempt is punishable only if a penalty exceeding three years' imprisonment is provided for the offence in question (Art. 23 sec. 1 of the Po.p.c.). The scope of sanctions for attempts was related to the amount of threat provided for a given crime, except that the penalty is subject to mitigation (Art. 23 sec.

Under the second category, the type of Art. 264 sec. 1 of the Po.p.c. should be quoted. According to its content, whoever, acts in agreement with the counterfeiter, in any way – including by offering for sale – transfers or puts into circulation a counterfeit or altered currency, is liable to prosecution. In the scope of the statutory threat, a reference to sanctions under Art. 262 of the Po.p.c. or Art. 263 of the Po.p.c. is made. In addition there is also provision for the criminalisation of an attempt to commit a crime (Art. 264 sec. 2 of the Po.p.c.). A special type of circulation of false values is included in Art. 265 sec. 1 letters a–b of the Po.p.c., saying that a person who in any way – including by offering for sale – transfers or puts into circulation as authentic: a counterfeit currency, processed or issued without the required authorisation or contrary to the conditions for the issue (letter a), or the amortised metal money at its full value (letter b) is liable to prosecution. In the first case, the offender is punishable by up to five years' imprisonment; in the second, an alternative sanction of up to a year's imprisonment or a fine of up to one hundred and twenty days is provided for.

The third category includes acts related to fencing imitations. A sentence of imprisonment of up to five years shall be imposed on any person who acquires, takes into custody, carries, transfers, exports for themselves or someone else for the purpose of placing on the market as authentic currency that is counterfeit, altered or issued without the required authorization or contrary to the conditions for carrying out the issue (Art. 266 sec. 1 letter a of the Po.p.c.). Pursuant to Art. 266 sec. 1 letter b of the Po.p.c., imprisonment of up to six months or a fine of up to sixty days shall be imposed on a perpetrator performing a similar offence against amortized metal money at its full value. For both types, the criminalisation of attempted crime is provided for (Art. 266 sec. 2 of the Po.p.c.).

The last crime covering the title issue is the offense under Art. 271 sec. 1 of the Po.p.c. This provision covers the preparation for counterfeiting of currency, securities and other legal tenders.[166] According to its content, the responsibility lies with whoever prepares to perform the acts specified in Art. 262 and 263 of the Po.p.c.

2 of the Po.p.c.). In accordance with Art. 23 sec. 3 of the Po.p.c., an attempt is not punishable if the means used by the perpetrator were useless or the object required to commit the crime non-existent. An institution of active repentance was envisaged. Pursuant to Art. 24 sec. 1 of the Po.p.c., the perpetrator of the attempt remains unpunished when they voluntarily withdrew from the performance or prevented the performance or, regardless of the performance, prevented the occurrence of an effect not falling within the characteristics of the type. If the performance is impossible due to an action independent of the behaviour of the withdrawing subject, the perpetrator is not punished if they made serious efforts to withdraw from the performance or prevent the occurrence of the effect (Art. 24 sec. 2 of the Po.p.c.).

[166] The type in question is *sui generis* the implementation of preparatory measures to counterfeit money, securities and other legal tenders, because such is the definition of offence is provided for. Pursuant to Art. 21 of the Po.p.c., preparatory actions are not punishable, unless a special provision provides otherwise. Art. 271 of the Po.p.c. is exactly such a provision that provides otherwise.

in such a way that they manufacture, import, acquire for themselves or another person, supply, offer for sale, among others: forms, matrices, plates, coin presses, stamping machines, negatives, photographs or other instruments that, due to their nature, can be used to commit these crimes (letter a) and paper, hologram or other material that is identical or may be confused with that which is intended to prevent counterfeiting or which is used to produce authentic coins or securities (letter b). In both cases, the preparation was threatened with imprisonment of up to a year or a fine of up to one hundred and twenty days. It is worth paying attention to a special institution implying the lack of punishability of the perpetrator. In accordance with Art. 271 sec. 3 of the Po.p.c., those who voluntarily withdrew from the performance of the prepared activity and prevent the danger caused by it or make serious efforts in this direction to prevent the commission of a prohibited act by another person who is still preparing to perform the act (letter a) are not liable to prosecution. In addition, this immunity can be enjoyed by anyone who destroys or renders unusable the means or objects referred to in Art. 271 sec. 1 letters a and b of the Po.p.c. or leads to their transfer to a public authority (letter b).

3. German-Speaking Countries

A. Germany (Penal Code of 15 May 1871)[167]

We should seek the regulations typifying prohibited acts relevant for our consideration in the Special Part, Section Eight – "Counterfeiting of money and seals".

Under the German Penal Code, crimes against the credibility and authenticity of money, securities and other legal tenders can be grouped into four categories. The first includes the types of counterfeiting or conversion of money (§ 146 sec. 1 item 1 of the G.p.c.), other legal tenders (§ 152a sec. 1 item 1 of the G.p.c.) or payment cards with a guarantee function (§ 152b sec. 1 of the G.p.c.). The second are the types of fencing imitations of money (§ 146 sec. 1 item 2 of the G.p.c.), other legal tenders (§ 152a sec. 1 item 2 of the G.p.c.) or payment cards with a guarantee function (§ 152b sec. 1 of the G.p.c.). As part of the third, one can distinguish the release of imitations into circulation (§ 146 sec. 1 point 3 of the G.p.c.) and other behaviours that result in the occurrence of a counterfeit in circulation (§ 147 sec. 1 of the G.p.c.).[168] The last category includes the preparatory action for counterfeiting

[167] Strafgesetzbuch vom 15. Mai 1871 (source: https://www.bmjv.de/SharedDocs/ExterneLinks/DE/StGB.html [access: 1.12.2022]), hereinafter referred to as G.p.c.

[168] W. Stree, *Veräußerung einer nachgemachten Münze an einem Sammler – BGH*, „JuS" 1978, pp. 236–239; D. Zielinski, *Geld- und Wertzeichenfälshung nach dem Entwurf eines Einführungsgesetzes zum Strafgesetzbuch*, „JZ" 1973, pp. 193–195.

money (§ 149 sec. 1 of the G.p.c.), other legal tenders (§ 151a sec. 5 of the G.p.c.) or payment cards with a guarantee function (§ 152b sec. 5 of the G.p.c.). We will also analyse issues related to active repentance (§ 149 sections 2 and 3 of the G.p.c.).

The prohibited act under § 146 sec. 1 item 1 of the G.p.c. must also be analysed. Pursuant to the aforementioned provision, a person who intends to release it into circulation as authentic, or to enable such circulation,[169] counterfeits[170]

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[169] From the point of view of the *Subjektive Tatbestandselemente*, both the intention to commit the offence and the fact that the manufactured counterfeits are put into circulation as authentic or that such placing on the market is possible, are required. The construction of the conditional intent (*dolus eventualis*) is sufficient to attribute criminal liability. On intent under German criminal law, see, e.g. C. Roxin, L. Greco, *Strafrecht, Allgemeiner Teil. Grundlagen, Der Aufbau der Verbrechenslehre*, München 2020, § 12 N 24; R. Rengier, *Strafrecht Allgemeiner Teil*, München 2020, pp. 101–119; W. Gropp, A. Sinn, *Strafrrecht, Allgemeiner Teil*, Berlin 2020, pp. 163–183; J. Wessels, W. Buelke, H. Satzger, *Strafrecht, Allgemeiner Teil*, Heidelberg 2019, N 334; H. Frister, *Strafrecht, Allgemeiner Teil*, München 2018, pp. 11–21; J. Eisele, *Abgrenzung Vorsatz und Fahrlässigkeit – „Berliner Raserfall"*, „JuS" 2018, p. 492 et seq.; T. Hörnle, *Vorsatzfeststellung in „Raser- Fällen"*, „NJW" 2018, p. 1576 et seq.; V. Krey, R. Eser, *Deutsches Strafrecht, Allgemeiner Teil*, Stuttgart 2016, N 386; R. Krack, *Jetzt geht's los – typische Klausurfehler im Rahmen der Versuchsprüfung*, „JA" 2015, p. 906 et seq.; W. Joecks, T. Kulhanek, [in:] V. Erb, J. Schäfer (Hrsg.), *Münchener Kommentar zum Strafgesetzbuch*, München 2020, § 16 N 12; T. Fischer, *Strafgesetzbuch und Nebengesetze*, München 2009, pp. 102–108; T. Weigend, *Vorsatz und Risikokenntnis – Herzbergs Vorsatzlehre und das Völkerstrafrechtt*, [in:] R.D. Herzberg, H. Putzke (Hrsg.), *Festschrift für Rudolf Dietrich Herzberg zum siebzigsten Geburtstag am 14. Februar 2008*, Tübingen 2008, p. 997 et seq.; J. Vogel, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar*, Berlin 2006, pp. 1000–1116; H.-H. Jescheck, T. Weigend, *Lehrbuch des Strafrechts, Allgemeiner Teil*, Berlin 1996, § 29 III 1; P. Cramer, [in:] A. Schönke, H. Schröder (Hrsg.), *Strafgesetzbuch. Kommentar*, München 1997, pp. 223–249; H. Welzel, *Das Deutsche Strafrecht*, Berlin 1969 (Reprint 2010), p. 74; G. Jakobs, *Strafrecht, Allgemeiner Teil: die Grundlagen und die Zurechnungslehre*, Berlin – Boston 1983 (Reprint 2011), p. 21 et seq.; W. Frisch, *Vorsatz und Risiko*, Köln – Berlin – Bonn – München 1983, p. 255 et seq.; A. Kaufmann, *Der dolus eventualis im Deliktsaufbau*, „ZStW" 1958, Vol. 70, p. 64 et seq. The perpetrator should at least foresee and accept that the results of their criminal activity may be mistaken in trade with an authentic monetary token, see U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *Systematischer Kommentar zum Strafgesetzbuch. Band 3*, Köln 2019, § 146 N 8; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *Strafgesetzbuch. Kommentar*, Baden-Baden 2017, § 146 N 12; W. Ruß, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar. Band 6*, Berlin 2009, p. 15; V. Erb, [in:] B. v. Heintschel-Heinegg (Hrsg.), *Münchener Kommentar zum Strafgesetzbuch. Band 3*, München 2005, pp. 783–784; K. Kühl, *Strafgesetzbuch. Kommentar*, München 2004, p. 655; H. Neuhaus, *Der endgültige Täuschungsentschluß – eine Strafbarkeitsvoraussetzung der Urkundenfälschung?* „GA" 1994, pp. 224–230; T. Fischer, *op. cit.*, p. 1062; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, München 1997, pp. 1181–1182; BGHSt 27 255, 259; BGHSt 35, 21; BGHSt 35, 21; BGHSt 35, 25; BGH JR 1976 294, 295. This does not mean that the perpetrator should aim to introduce imitations of money into circulation on their own. Their purpose may also be to create such an opportunity for another person, see E. Dreher, W. Kanein, *Der gesetzliche Schutz der Münzen und*

Medaillen, München 1975, p. 72 et seq.; E. Dreher, *Aktuelle Probleme der Geldfälschung*, „JR" 1978, pp. 45–47; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *Strafrecht, Besonderer Teil, Straftaten gegen Gemeinschaftswerte*, München 2005, § 67 N 26; W. Stree, *op. cit*., pp. 236–237. The intent required to attribute a crime does not exist, among others, when the perpetrator: offers imitations of money as an element of jewelry; wants to boast of their prosperity, or when they wish to pretend to have creditworthiness, see W. Ruß, *op. cit*., p. 17; W. Stree, *op. cit*., pp. 236–238; BGH GA 1965 215. It is worth clarifying that the purpose of circulating or allowing circulation does not have to be the sole motive of the perpetrator. A detailed analysis of the release in circulation can be found as part of the interpretation of the characteristics of crimes grouped in the second category.

[170] Money is counterfeit if it does not originate from an entity or institution which, in accordance with the internal rules of the legal order concerned, is considered to be the sole or partial issuer of the guarantee incorporated in the monetary token. The causative action boils down to the production of a counterfeit money in such a way that it can be confused with the original. The level of created imitation is of fundamental importance, which in ordinary transactions – everyday transactions – is to create the risk of misleading an unsuspecting person, see H. Otto, *Grundkurs Strafrecht: Die einzelnen Delikte*, Berlin 2005, § 75 N 5; S. Bartholme, *Geld-, Wertzeichenfälschung und verwandte Delikte*, „JA", 1993, pp. 197–198; W. Döll, *Geldfälschungsdelikte*, „NJW" 1952, p. 289; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit*., § 146 N 3 et seq.; W. Ruß, *op. cit*., p. 12; V. Erb, *op. cit*., pp. 781–783; T. Fischer, *op. cit*., pp. 1061–1062; K. Kühl, *op. cit*., p. 653; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1181; BGHSt 23 229, 232; BGHSt 27 255, 258; BGHSt 23 229, 231. Imitation is not required to remain at a high level. For the attribution of liability, it is sufficient that the imitation gives the impression that it was issued and put into circulation as a legal tender by a competent national or foreign authority. It is justified in relation to ensuring the protection of money as a legal tender , which allows the redemption of monetary liabilities up to the amount indicated in its denomination. Criminalisation for the achievement of even a small level by imitation is also due to the lack of obligation to verify the authenticity of monetary tokens in each transaction, see R. Maurach, F-Ch. Schroeder, M. Maiwald, *op. cit*., § 67 N 17; E. Dreher, *op. cit*., p. 45 et seq.; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1181. Examples of counterfeits that were considered such imitations include where only the obverse of the coin had an imprinted mint seal and the reverse was completely smooth; imitations of banknotes with an identical imprint on their front and back, or the creation of money with a non-existent denomination. The so-called systemic money is also considered a counterfeit. It is indicated that these are such imitations that were created (usually by gluing) fragments of several authentic banknotes in such a way that they are only seemingly complete, see I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 3*, „JZ" 1997, pp. 490–498; B.R. Sonnen, *Geldschein mit Werbeaufdruck*, „JA" 1996, p. 95; R. Hefendehl, *Zur Vorverlagerung des Rechtsgutsschutzes am Beispiel der Geldfälschungstatbestände*, „JR" 1996, p. 353 et seq.; D. Schmiedl-Neuburg, *Die Falschgelddelikte. Ein Beitrag zur Kriminologie, Kriminalistik und strafrechtlichen Problematik dieser Gesetzesverstöße*, Lübeck 1968, p. 85 et seq.; S. Bartholme, *op. cit*., pp. 197–199; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit*., § 146 N 8; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit*., § 146 N 5b-6a; W. Ruß, *op. cit*., p. 13; V. Erb, *op. cit*., p. 782; T. Fischer, *op. cit*., pp. 1061–1062; K. Kühl, *op. cit*., pp. 653–654; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1181; BGHSt 23 229, 232; BGHSt 23 229, 230; BGHSt 23 229. In the case of uncut sheets of counterfeit banknotes; imitation banknotes with clearly visible advertising prints on the front and back; or pieces of metal which have been fabricated for the purpose of taking goods from vending machines these were not deemed counterfeits, see K. Binding, *Lehrbuch des gemeinen Deutschen Strafrechts, Besonderer*

money[171] or alters it in such a way as to give it a appearance of greater value, shall be

Teil, Leipzig 1904, § 178 II 2a; H.-Ch. Hafke, *„Systemmünzen" – Zum Tatbestand des „Nachmachens von Geld" in § 146 Abs. 1 StGB*, „MDR" 1976, pp. 278–279; W. Mitsch, *Strafbare Überlistung eines Geldspielautomaten*, „JuS" 1998, pp. 307–309; W. Ruß, *op. cit.*, p. 13; V. Erb, *op. cit.*, pp. 783–784. There are two points to be made. Firstly, it will be the implementation of elements such as the production of monetary tokens using devices used for their issuance, but without the consent of the competent authority. This issue was analyzed after the so-called minting scandal in Karlsruhe, see G. Prost, *Straf- und währungsrechtliche Aspekte des Geldwesens*, [in:] G. Warda, H. Waider, R. v. Hippel, D. Meurer (Hrsg.), *Festschrift für Richard Lange zum 70. Geburtstag*, Berlin 1976 (Reprint 2017), pp. 419–427; J. Wessels, *Zur Reform der Geldfälschungsdelikte und zum Inverkehrbringen von Falschgeld*, [in:] P. Bockelmann, A. Kaufmann (Hrsg.), *Festschrift für Paul Bockelmann zum 70. Geburtstag*, München 1979, pp. 669–672; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 6; W. Ruß, *op. cit.*, p. 14; T. Fischer, *op. cit.*, pp. 1061–1062; K. Kühl, *op. cit.*, pp. 653–654; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 17; H. Otto, *op. cit.*, § 75 N 6; E. Dreher, *op. cit.*, pp. 45–46; S. Bartholme, *op. cit.*, pp. 197–198. Secondly, counterfeiting money may also consist in giving the appearance of valid money to currency partially withdrawn from circulation, see RGSt 60 316; RGSt 59 373.

[171] The object of the executive action of the act under § 146 sec. 1 point 1 of the G.p.c. is money. It means any legal tenders which have been certified by the State or an authority authorised to do so and is intended for public circulation, in isolation from the general obligation to accept it. In this context, the exchange rate of the currency or the possibility of its voluntary or forced redemption is irrelevant. However, the condition is the fact of its formal issue by a given country, see W. Geisler, *Der Begriff Geld bei der Geldfälschung*, „GA" 1981, pp. 497–510; D. Kienapfel, *Probleme des strafrechtlichen Geldbegriffs*, „ÖJZ", 1986, p. 423 et seq.; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit., § 146 N 1*; W. Ruß, *op. cit.,* pp. 9–10; T. Fischer, *op. cit.*, p. 1060; V. Erb, *op. cit.*, p. 777; K. Kühl, *op. cit.*, p. 653; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1180; G. Prost, *op. cit.*, pp. 419–422; H. Otto, *op. cit.*, § 75 N 3; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 13; J. Wassels, *op. cit.*, pp. 669–672; BGHSt 12 344, 345; BGHSt 23 229, 231; BGHSt 27 255, 258; BHSt 32 198; BGHSt 31, 382; BGSt 58, 255, 256. The question is whether we are dealing with valid money when the act of its issuance is planned for the future. In principle, the considerations of individual authors, which focused on the production of euro banknotes and coins before the official act of issue, led to the conclusion that such money is not penalised on the basis of the crime in question, see H. Fögen, *Geld und Währungsrecht*, München 1969, pp. 21–22; F.A. Mann, *Das Recht des Geldes*, Frankfurt am Main 1960, p. 8 et seq.; G. Prost, *op. cit.*, p. 422 et seq.; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 4; V. Erb, *op. cit.*, p. 778; K. Kühl, *op. cit.*, p. 653; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1180. However, it is argued that such a perception remains contrary to EU legislation, see T. Westphal, *Geldfälschung u. die Einführung des Euro*, „NStZ" 1998, pp. 555–556; Ch. Schröder, *Die Einführung des Euro und die Geldfälschung*, „NJW" 1998, p. 3179; A. Dittrich, *Das Dritte Euro-Einführungsgesetz*, „NJW", 2000, p. 487; J. Vogel, *Strafrechtlicher Schutz des Euro vor Geldfälschung. Europäischer Rechtsrahmen und Anpassungsbedarf im deutschen Recht*, „ZRP" 2002, pp. 7–9; W. Ruß, *op. cit.*, p. 10; T. Fischer, *op. cit.*, p. 1060. The prevailing view is that money remains a legal tender until its formal withdrawal by means of a specific state act, cf. I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 8; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 4a; W. Geisler, *op. cit.*, pp. 497–515; H. Otto, *op. cit.*, § 75 N 3. As long as the money is protected, banks and other entities are obliged

to exchange it. The status of money still exists – despite the formal decision to withdraw it from circulation – because what is significant is the right to exchange this legal tender. The right to exchange money is a rationale for criminalizing money withdrawn from circulation, because it is the basis for its further usefulness in economic trade, see J. Wessels, M. Hettinger, *Strafrecht Besonderer Teil*, Berlin 2003, N. 922; V. Erb, *op. cit.*, pp. 779–780; W. Ruß, *op. cit.*, p. 11; T. Fischer, *op. cit.*, p. 1060; K. Kühl, *op. cit.*, p. 653; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1180–1181; H.-Ch. Hafke, *op. cit.*, pp. 278–279; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 13–15; H. Fögen, *op. cit.*, p. 27; BGHSt 12 345; BGHSt 19 357, 359; BGHSt 31 380, 382. Banknotes and coins denominated in German marks retain their character as they are subject to exchange to euro without time limits, see Ch. Schröder, *op. cit.*, pp. 3179–3180. What is analysed in the context of assessing whether money is involved in a given factual situation, the issue of the loss of the status of legal tender due to its prolonged lack of use. This concerned the essence of the English gold sovereign, which, despite the lack of its formal withdrawal from circulation, was not used for a long time, see M. Mebesius, W. Kreußel, *Die Bekämpfung der Falschgeldkriminalität*, Wiesbaden 1979, p. 48 et seq.; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 9; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 2–3; W. Ruß, *op. cit.*, p. 11; K. Kühl, *op. cit.*, pp. 653–654; V. Erb, *op. cit.*, p. 780; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1181; S. Bartholme, *op. cit.*, pp. 197–198; W. Geisler, *op. cit.*, pp. 497–505; H. Fögen, *op. cit.*, pp. 26–27; BGHSt 12 344; BGHSt 19 357. When discussing the issue of money, one should also mention the so-called commemorative and special coins (*die Gedenkmünzen und die Sondermünzen*). This issue is important for reading the scope of illegality specified in § 146 sec. 1 item 1 of the G.p.c. The following are indicated as part of the arguments raised against the recognition of commemorative and special coins as the object of the causative action: payment of the premium/price, which often significantly exceeds the nominal value, special external features of the monetary mark, and its limited amount. However, another factor seems to be decisive. The recognition that commemorative and special coins are protected under money counterfeiting provisions is supported by the fact that they are legal tender, capable of redeeming monetary obligations. By a formal decision of a given state, they have a certain nominal face value and all the characteristics of money. The above is not affected by the fact that, for these coins, in principle, no one refers to their nominal value, due to their usually higher market value. There are no obstacles for the perpetrator being subject to criminal liability under § 146 sec. 1 point 1 of the G.p.c. for the counterfeiting of commemorative or special money. However, the attribution of the aggravated act under the above provision will be prevented by the *Subjektive Tatbestandelemente* due to the lack of intent to put it into circulation. In most such cases, the perpetrator is ultimately responsible for fraud (causing a disadvantageous regulation on the property of the buyer of a counterfeit commemorative or special coin – usually a collector – by misleading them as to its authenticity in order to obtain a financial benefit), see W. Oppe, *Fälschung von Sammlermünzen*, „MDR", 1973, p. 183; I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 2*, „JZ" 1986, p. 992 et seq.; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 2; W. Ruß, *op. cit.*, p. 11; V. Erb, *op. cit.*, p. 779; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 13; T. Fischer, *op. cit.*, p. 1061; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1180–1181; H.-Ch. Hafke, *op. cit.*, pp. 278–279; G. Prost, *op. cit.*, pp. 419–427; Ch. Schröder, *op. cit.*, p. 3179; T. Westphal, *op. cit.*, pp. 555–556; BGHSt 27 255, 259; cf. W. Geisler, *op. cit.*, pp. 497–507. This fundamentally distinguishes commemorative and special coins from the South African Krugerrand coins, see BGHSt 32 192, 200. The status of money should be refused to such coins/banknotes that do not have a nominal value and, consequently, can only be traded as a thing, see V. Erb, *op. cit.*, p. 779.

held liable.[172] In the case of implementation of the constituents elements of this type, the threat of imprisonment for a period of not less than one year[173] is provided for. In addition, in § 146 sec. 2 of the G.p.c., we find the regulation of an aggravated type of money counterfeiting. Among the elements that condition a stricter penalty are:

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[172] The object of the executive act is altered when, as a result of the altering, money acquires the appearance of a higher value. It is not important how the perpetrator achieves the intended effect. It is indicated that a higher value should be understood as the nominal value that money has as legal tender. There are no elements of the type when the altering concerned elements of the public guarantee of the state declared in money, which are important for the collector's value. When the perpetrator fails to create the appearance of a higher value of money, we are dealing with an attempt, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 9; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 7; W. Ruß, *op. cit.*, p. 15; T. Fischer, *op. cit.*, p. 1062; K. Kühl, *op. cit.*, p. 654; V. Erb, *op. cit.*, p. 782; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1181; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 20; S. Bartholme, *op. cit.*, p. 197; H.-Ch. Hafke, *op. cit.*, p. 279 et seq.; RGSt 68, 65, 69.

[173] There are term imprisonment and life imprisonment (§ 38 sec. 1 of the G.p.c.). When speaking about term imprisonment, it should be noted that it is imposed for a period from one month to fifteen years (§ 38 sec. 2 of the G.p.c.), see F. Dünkel, *Wege und Irrwege der Reform des strafrechtlichen Sanktionensystems in Deutschland*, [in:] F. Dünkel, Ch. Fahl, F. Hardtke, S. Herrendorf, J. Regge, Ch. Sowada (Hrsg.), *Straftrecht Wirtschaftsstrafrecht Steuerrecht, Gedächtnisschrift für Wolfgang Joecks*, München 2018, p. 51 et seq.; G. Kett-Straub, H. Kudlich, *Sanktionenrecht*, München 2017, § 2 N 6; F. Streng, *Strafrechtliche Sanktionen. Die Strafzumessung und ihre Grundlagen*, Stuttgart 2012, pp. 112 et seq.; M. Seebode, *„Freiheitsstrafe", ein Blankett des Strafgesetzbuchs*, [in:] M. Hettinger, T. Hillenkamp, W. Küper (Hrsg.), *Festschrift für Wilfred Küper zum 70. Geburtstag*, Heidelberg 2007, p. 577 et seq.; J. Häger, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar. Band 2*, Berlin 2006, pp. 800–832; W. Heinz, *Sanktionierungspraxis in der Bundesrepublik Deutschland im Spiegel der Rechtspflegestatistik*, „ZStW" 1999, pp. 461–487; K. Lüderssen, *Freiheitsstrafe ohne Funktion*, [in:] J. Schulz, T. Vormbaum (Hrsg.), *Festschrift für Günter Bemmann zum 70. Geburtstag*, Baden-Baden 1997, p. 47 et seq.; G. Kett-Straub, *Die lebenslange Freiheritsstrafe. Legitimation, Praxis, Strafrestaussetzung und besondere Schwere der Schuld*, Tübingen 2011, p. 9 et seq.; K. Rolinski, *Lebenslange Freiheitsstrafe und ihr Vollzug*, [in:] T. Feltes, Ch. Pfeifer, G. Steinhilper (Hrsg.), *Festschrift für Hans-Dieter Schwind zum 70. Geburtstag*, Heidelberg 2006, p. 635 et seq.; G. Grünwald, *Überlegungen zur lebenslangen Freiheitsstrafe*, [in:] J. Schulz, T. Vormbaum (Hrsg.), *op. cit.*, p. 161; W. Bock, Ch. Mährlein, *Die lebenslange Freiheitsstrafe in verfassungsrechtlicher Sicht*, „ZPR" 1997, p. 376 et seq.; T. Fischer, *op. cit.*, pp. 324–326; K. Kühl, *op. cit.*, pp. 238–245; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 596–610; W. Gropp, A. Sinn, *op. cit.*, pp. 677–681. Pursuant to § 39 of the G.p.c., the determination of the term of imprisonment is determined differently depending on its period. If the sentence actually imposed is less than one year, it shall be adjudged in weeks and months. On the other hand, if the sentence exceeds one year – the sentence is adjudged in months and years, see H. Radtke, [in:] *Münchener Kommentar zum Strafgesetzbuch. Band 2*, Hrsg. B. v. Heintschel-Heinegg, München 2020, § 29 N 2; E. Horn, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *Systematischer Kommentar zum Strafgesetzbuch. Band 2*, Köln 2019, § 29 N 3; J. Häger, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.) *op. cit.*, pp. 832–836; BGHSt 16, 167; BGHSt 36 270, 271.

acting to obtain a financial benefit[174] or committing an act as a member of an organized criminal group (gang).[175] Perpetration of the aggravated type was associated with the threat of a penalty of not less than two years' imprisonment. There are also two mitigated types of money counterfeiting (§ 146 sec. 3 of the G.p.c.). They are referred to as minor cases. The first is a modified type with reference to § 146 sec. 1 item 1 of the G.p.c. In this case, the penalty of imprisonment ranging from three months to five years was provided for (§ 146 sec. 3 sentence 1 of the G.p.c.). The second is a mitigated type in relation to the qualified type under § 146 sec. 2 of the G.p.c. The liability for its commission was provided with a penalty of imprisonment for a period not shorter than one year and not exceeding ten years (§ 146 sec. 3 sentence 2 of the G.p.c.).

When considering the protection of money and its surrogates by means of criminal law, it is necessary to mention the categories of securities whose authenticity and credibility have been equated with those attributed to the currency. This is justified by their mass presence and the confidence they enjoy in economic trade due to the implementation of analogous functions.[176] The framework of § 151 of the G.p.c. provides an enumerative list of securities, which should be considered equivalent

[174] The perpetrator acts in order to obtain a financial benefit when they intend to profit from the performance of the act. The occurrence of the intent to obtain income from a specific source is not dependent on the time-period of the offense, the regularity of the benefits obtained or their amount, see BGHSt 50 347, 350. For the assignment of a modified type, it is sufficient that the offender obtains a financial benefit through other persons or accepts the promise of such benefit. It is possible to hold the perpetrator liable when they perform a prohibited act in order to create the possibility of obtaining a financial benefit in the future, see W. Ruß, *op. cit.*, pp. 26–27; T. Fischer, *op. cit.*, p. 1066.

[175] The concept of an organised criminal group is defined as the association of at least three persons who act jointly and in concert – by joining forces – to commit offences. This last element is worth emphasizing. The existence of an organised group is excluded when the association of persons concerns the implementation of a single, specific offence. For the admission of the aggravated type committed within a group, it is not necessary to perform the act. It is sufficient if, during the time the group was acting, there was an intention among its members to commit several, even more unspecified, prohibited acts, see BGHSt 46 321, 336; BGHSt 47 214, 216. For the adoption of the aggravated type, it is necessary to distinguish between an organised group and accomplicity. Committing an act of complicity does not allow the acceptance of an offence under § 146 sec. 2 of the G.p.c. Acting within an organized group is characterized by the element of continuity, durability of the relationship of several people, and the purpose of joint implementation of several crimes in the future. It is not necessary for the group to have clear organisational structures, as well as the simultaneous action of all its members, see W. Ruß, *op. cit.*, p. 28; T. Fischer, *op. cit.*, p. 1066; BGHSt 46 321, 329; BGHSt 47 214, 216.

[176] Doubts as to the meaningfulness of the above solution are raised by Erb, according to which, in most cases, the enumeration of securities treated as money from the point of view of criminal law protection concerns the values subject to mandatory dematerialization both in trading and in the form of a document, see V. Erb, *op. cit.*, p. 782; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.) *op. cit.*, § 151 N 2f; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1182.

to money as the object of the causative action on the basis of types from §§ 146, 147, 149 or 150 of the G.p.c. A necessary condition for such a conclusion is the presence of special security features incorporated by means of printing and paper technologies.[177] The content of the provision lists: bearer bonds and such negotiable instruments that are part of the entire issue, provided that their content promises a benefit consisting in the payment of a certain amount of money (§ 151 sec. 1 of the G.p.c.),[178] shares (§ 151 sec. 2 of the G.p.c.),[179] certificates of shares issued by invest-

[177] Protection equal to money is granted only to those securities which, by virtue of their economic significance and their functions, are particularly protected against the falsification of their external characteristics by means of types of print and paper. Both forms must occur cumulatively. A special security can be mentioned when, on the one hand, it is close to the level provided for money, on the other hand, it exceeds the generally accepted framework for the protection of documents, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 151 N 5; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 151 N 3; W. Ruß, *op. cit.*, p. 50; T. Fischer, *op. cit.*, p. 1073; K. Kühl, *op. cit.*, p. 662; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1192; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 43. In order to imitate a security, the counterfeit should be manufactured in accordance with the requirements, i.e. with the use of appropriate equipment in terms of the type of paper and the form of printing. The resulting counterfeit must give the impression of an authentic security thus satisfying the requirements relating to its protection against counterfeiting. In addition, it must create a semblance of origin from a specific issuer, see I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 2*, „JZ" 1986, p. 993; idem, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 151 N 15; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 151 N 5; W. Ruß, *op. cit.*, p. 51; T. Fischer, *op. cit.*, p. 1073; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1192; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 13; RGSt 48 125, 127; RGSt 51 410, 412; RGSt 58 412, 413–414.

[178] The subject literature indicates not only bonds that promise to pay a certain amount of money, but also bonds denominated in a certain amount of money that are part of the entire issue, see W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1192. There are bonds issued by the Federal Government, the Länder or municipalities, as well as mortgage bonds. It also refers to promissory notes issued on order, the content of which promises a benefit consisting in the payment of a certain amount of money, see W. Ruß, *op. cit.*, p. 51. Securities within the meaning of § 807–808 BGB and lottery tickets that do not amount to a certain amount of money are excluded from the scope of protection, see V. Erb, *op. cit.*, p. 815; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1192. The latter are not protected, even though they certify the claim for payment of the prize after the draw. However, this is not a specific claim, but a potential one and it fails to indicate a specific amount of money. Therefore, lottery tickets are treated as vouchers, see W. Ruß, *op. cit.*, p. 50. It is indicated that bearer bonds are not subject to the protection provided for in § 151 sec. 1 of the G.p.c., when only the payment of interest on the agreed amount of money is promised, see *Ibidem*, p. 51.

[179] Pursuant to § 151 sec. 2 of the G.p.c., shares are protected regardless of whether they are bearer shares or registered shares. The provision does not limit the scope of the norm to securities of a specific category. In addition to the protection provided for in the above regulation, temporary certificates and receipts received before the issuance of relevant certificates of participation or a share document, see W. Ruß, *op. cit.*, p. 51; V. Erb, *op. cit.*, p. 815.

ment companies (§ 151 sec. 3 of the G.p.c.),[180] interest coupons, dividend coupons and renewal coupons for securities indicated in § 151 sections 1–3 of the G.p.c. and promissory notes (certificates) for the delivery of such securities (§ 151 sec. 4 of the G.p.c.,[181] as well as traveller's cheques (§ 151 sec. 5 of the G.p.c.).[182] It is worth mentioning the extension of the scope of legal and criminal protection provided for domestic legal tender over foreign money and securities. This is provided for in the clause from § 152 of the G.p.c. Pursuant to the said provision, the provisions of § 146–151 of the G.p.c. shall apply to money and securities of foreign currency areas.[183] Next, we need to pay attention to type under § 152a sec. 1 item 1 of the

[180] The issue of certificates of shares issued by investment companies was raised in the Act of 16 April 1957 on investment companies (Gesetz über Kapitalanlagegesellschaften vom 16.4.1957 – BGBl. I S. 378).

[181] Certificates referred to in § 151 sec. 4 of the G.p.c. play an increasing role in economic trade, due to the fact that they embody the right to the securities listed in sections 1–3 § 151 of the G.p.c. This occurs in the case of circulation of the certificate in place of the security stored in the depository, or by issuing a certificate and transferring the right from the security in the securities account, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 151 N 13; W. Ruß, *op. cit.*, p. 51; V. Erb, *op. cit.*, p. 815.

[182] Traveller's cheques are securities subject to criminal law protection under § 151 sec. 5 G.p.c. due to their widespread use in international payment transactions. They include a monetary amount – usually – in a foreign currency. They may at any time be exchanged by the beneficiary for cash or used directly as a legal tender. This usually happens in certain shops, hotels or restaurants, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 151 N 16; W. Ruß, *op. cit.*, p. 51; V. Erb, *op. cit.*, p. 815; BGHSt 30 70. The security analysed shall be of a standardised, uniform nature. It is irrelevant who issued the cheque in question to attribute liability for counterfeiting. The altering of a traveller's cheque takes place when the perpetrator imitates the right to execute it incorporated in the security by forging a second signature, which must be submitted in order to prove the identity of the redeemer. The signature on the redemption of the cheque must be consistent with the signature for the first time when the cheque is issued by a credit institution or travel agent. Such a false signature qualifies as a forgery of the document under § 267 sec. 1 of the G.p.c., see V. Erb, *op. cit.*, p. 815. In the historical context, the requirement to indicate in the content of the traveller's cheque form the specific amount for which the security is to be issued, has lost its significance, cf. W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1192, as this belief became outdated due to specific changes in normative acts (Art. 35 Strafechtsänderungsgesetz vom 22.12.2003 (BGBl. I S. 2838).

[183] Equal protection of domestic and foreign currency and securities is updated in each case of carrying out the causal action of § 146–151 of the G.p.c., in isolation from inter- and pan-national regulations, the existence of diplomatic relations between states and regardless of whether the third country to whose currency or value the attack was directed provided for reciprocity. It is irrelevant whether the conduct of the perpetrator has led to a specific risk of causing negative effects on the domestic economic turnover or the internal market of the European Union, see I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 2*, „JZ" 1986, p. 992; H. Lüttger, *Bemerkungen zu Methodik und Dogmatik des Strafschutzes für nichtdeutsche öffentliche Rechtsgüter*, [in:] T. Vogler (Hrsg.), *Festschrift für Hans-Heinrich Jescheck zum 70. Geburtstag*, Berlin 1985,

G.p.c. According to its content, who, in order to mislead in legal transactions or to enable such misleading,[184] forges or alters[185] domestic or foreign cheques and bills of

pp. 121–173; E. Schlüchter, *Zur teleologischen Reduktion im Rahmen des Territorialitätsprinzips*, [in:] R.D. Herzberg (Hrsg.), *Festschrift für Dietrich Oehler: zum 70. Geburtstag*, Köln 1985, p. 307; W. Ruß, *op. cit.*, p. 53; T. Fischer, *op. cit.*, p. 1074; K. Kühl, *op. cit.*, p. 662; V. Erb, *op. cit.*, p. 816; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1193. It is necessary to distinguish the protection of foreign currency and securities under criminal law from the territorial and personal scope of application of the German criminal law. In relation to the title act, the latter issue is regulated in § 6 sec. 7 of the G.p.c., where we read that German criminal law continues to apply, regardless of the law of the place of committing the act, to the following prohibited acts committed abroad: counterfeiting of money and securities (§ 146, 151 and 152 of the G.p.c.), forgery of payment cards with a guarantee function (§ 152b, sections 1–4 of the G.p.c.) and their preparation (§ 149, 151, 152 and 152b sec. 5 of the G.p.c.), cf A. Eser, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 99–100; T. Fischer, *op. cit.*, p. 39; K. Kühl, *op. cit.*, p. 38. What is decisive in recognition whether we are dealing with foreign money or a security, are the provisions of foreign law. This does not change the fact that definitively defined objects must be subsumed under the elements of the respective types of prohibited acts, see V. Erb, *op. cit.*, p. 817 and I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 2*, „JZ" 1986, p. 992; BGHSt 32, 198, 200; idem, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 152 N 3–8. It should be noted that foreign securities, which do not have special protection against fraud with use of print and type of paper, do not benefit from protection. This is justified by the fact that § 152 of the G.p.c. is not intended to introduce more intensive, but analogous protection of foreign values, as provided for in the domestic legal order, see 54; V. Erb, *op. cit.*, pp. 817–818; W. Geisler, *op. cit.*, p. 510.

[184] There is no objection to the fact that it is an intentional act in relation to all the objective elements of the structure of the offence. The legislator has provided for the perpetrator to act in order to mislead in legal transactions or to enable such misleading. It is indicated that it is sufficient that there is a possibility that false values could be used by anyone in legal transactions to mislead, see K.H. Schumann, *Die elektronische Geldbörse auf Chipkartenbasis. Eine Untersuchung ihres strafrechtliche Schutzes durch die §§ 152a, 152b StGB*, Berlin 2004, p. 142; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 152a N 14; W. Ruß, *op. cit.*, p. 58; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1195; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 51.

[185] The functional constituent element of the type from § 152a sec. 1 point 1 of the G.p.c. corresponds to the behaviour qualified under § 146 sec. 1 item 1 of the G.p.c. and includes any counterfeiting behaviour leading to the creation of an imitation payment card, check or promissory note or change of the original medium. Altering may involve manipulation (alternatively or cumulatively) of information stored on the magnetic strip of the card or its microchip. This may refer to the cardholder's data, its expiry date, scope of application, credit balance, or a photo of the cardholder integrated with the card, see W. Joecks, *Strafgesetzbuch, Studienkommentar*, München 2009, N 4; R. Rengier, *Strafrecht, Besonderer Teil. Delikte gegen die Person und die Allgemeinheit*, München 2008, § 39 N 27; J. Wessels, M. Hettinger, *Strafrecht, Besonderer Teil 2, Straftaten gegen Persönlichkeits- und Gemeinschaftswerte*, Heidelberg 2008, N 947; J. Eisele, F. Fad, *Strafrechtliche Verantwortlichkeit beim Mißbrauch kartengestützter Zahlungssysteme*, „Jura" 2002, pp. 305–312; J. Eisele, *Fälschung von Zahlungskarten*, „JA" 2001, pp. 747–751; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 152a N 20; W. Ruß, *op. cit.*, pp. 57–58; V. Erb. *op. cit.*, p. 822; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1194–1195; K.H. Schumann,

exchange,[186] payment cards or other tangible non-cash payment instruments,[187] is

op. cit., p. 91; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 49; BGHSt 46 146, 152. We deal with an inauthentic payment card in a situation where the perpetrator leads to a situation where the imitation gives the impression that it was issued by an entity indicated by the information contained or recorded on the card. The forgery of a payment card may be referred to both when the counterfeit corresponds to the original only in terms of its optical attributes, but does not contain a magnetic strip or microchip, and when the magnetic strip or chip is applied by the perpetrator to an unprinted piece of plastic for use in ATMs, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.) *op. cit.*, § 152a N 16; W. Ruß, *op. cit.*, pp. 56–57; T. Fischer, *op. cit.*, p. 1078; K. Kühl, *op. cit.*, p. 664; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1194–1195. This is due to the simple assumption that the possibility of misleading the processing system regarding the data contained in the card is conditioned by the encoding and basic designata of the card, rather than by the colour of its prints, see H. Achenbach, *Aus der 1991/1992 veröffentlichen Rechtsprechung zum Wirtschaftssrecht*, NStZ 93, p. 430; T. Fischer, *op. cit.*, p. 1078; V. Erb, *op. cit.*, p. 821. The forgery of a payment card – through its altering – will be the modification of its magnetic strip or microchip, which will make it possible to use it in ATMs other than those belonging to the issuer of credit institutions (the so-called tripartite system), see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 152a N 16; V. Erb, *op. cit.*, p. 821.

[186] A cheque is a security that meets the characteristics provided for in Art. 1 and 2 of the Check Act (Scheckgesetz). In turn, the promissory note is a security filled in accordance with the rules set out in Art. 1–2 and Art. 75–76 of the Act on bills of exchange (Wechselgesetz). Counterfeiting consists in the fact that in the imitation of a cheque or a bill of exchange there is at least one statement that does not come in whole or in part from a person entered in the content of the document. It is necessary to distinguish the qualification of a fake security from the creation of an imitation cheque form or Eurochecque form. Qualification under § 152a sec. 1 item 1 of the G.p.c. is excluded in the latter case, because the form does not identify the issuer, see H. Tröndle, T. Fischer, *Strafgesetzbuch und Nebengesetze*, München 2004, § 152a N 6–7; H. Otto, *Mißbrauch von Scheck- und Kreditkarten sowie Fälschung von Vordrucken für Euroschecks und Euroscheckkarten, Zeitschrift für Wirtschaft*, „Steuer und Strafrecht" 1986, pp. 150–154; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 152a N 8; W. Ruß, *op. cit.*, p. 57; T. Fischer, *op. cit.*, p. 1078; K. Kühl, *op. cit.*, p. 664; V. Erb, *op. cit.*, p. 821; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1195.

[187] A payment card is defined as a card by means of which the issuer authorises the holder to make non-cash payments or withdraw cash from ATMs, see D.D. Chiampi, *Totalfälschung von Kreditkarten*, Berlin 1999, p. 82 et seq.; S. Husemann, *Die Verbesserung des strafrechtlichen Schutzes des bargeldlose Zahlungsverkehrs durch das 35. Strafrechtsänderungsgesetz*, „NJW" 2004, pp. 104–105; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.) *op. cit.*, § 152a N 6; W. Ruß, *op. cit.*, pp. 56–57; T. Fischer, *op. cit.*, p. 1076; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1194; BGHSt 46 146, 148. The purpose of the payment instrument is to enable the holder to transfer money or cash values. The provision includes any chip cards (electronic purses) that incorporate a money surrogate. The provision of § 152a sec. 1 point 1 of the G.p.c. does not apply to payment cards with a guarantee function, preventing a third party from interfering in the initiation, course or completion of a transaction using it, see R. Hefendehl, *Strafrechtliche Probleme beim Herstellen, beim Vertrieb und bei der Verwendung von wiederaufladbaren Telefonkartensimulatoren*, „NStZ" 2000, p. 348; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 152a N 2; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen

liable to prosecution. In the case of implementation of elements of type, the conduct was punishable by a penalty not exceeding five years' imprisonment or a fine.[188]

(Hrsg.), *op. cit*., § 152a N 6; T. Fischer, *op. cit*., p. 1076; K. Kühl, *op. cit*., p. 664; V. Erb, *op. cit*., p. 820; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1194; cf. K. Altenhain, *Der strafbare Mißbrauch kartengestützter elektronischer Zahlungssysteme*, „JZ" 1997, p. 752 et seq. This issue looks differently in case of cards entitling their holder for monetary settlements with use of consumer credit from the entity issuing the card (so-called bilateral/bipartisan system). As a rule, they are included in the term of a payment card without a guarantee function, provided that the issuing entity is a credit institution or a financial service provider, see T. Fischer, *op. cit*., p. 1076. Outside the scope of the regulation are cards used for payments for services performed by the card issuer itself, cards used to purchase meals in canteens, telephone cards, code cards used to record the employee's presence and working time, identification access cards, or cards used only to collect a statement of the balance of funds left on the bank account, see U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit*., § 152a N 4; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.) *op. cit*., § 152a N 6; W. Ruß, *op. cit*., p. 57; T. Fischer, *op. cit*., p. 1076; V. Erb, *op. cit*., p. 820; S. Husemann, *op. cit*., pp. 104–106; R. Hefendehl, *Strafrechtliche…*, *op. cit.,* pp. 348–349. The scope of application of § 152a sec. 1 item 1 of the G.p.c. is restricted by the requirement of special protection against counterfeiting. This results from § 152a sec. 4 of the G.p.c., where we read that payment cards and other physical non-cash payment instruments are those that have been specially protected against fraud by their design or coding. The protection against fraud provided by the issuer of the legal tender should be distinguished from safeguards protecting against unauthorized use, e.g. the signature of the payment card holder or the PIN, see F. Schnabel, *Telefon-, Geld-, Prepaid-Karte und Sparcard*, „NStZ" 2005, p. 18; V. Erb, *op. cit*., p. 820. The design should be understood as an external motif that goes beyond the usual print used by the issuer of the payment card. What is mentioned are holograms embedded in the legal tender, see W. Ruß, *op. cit*., p. 57; T. Fischer, *op. cit*., p. 1076; K. Kühl, *op. cit*., p. 664; V. Erb, *op. cit*., p. 820; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1194; BGHSt 46 146, 148.

[188] Pursuant to § 40 sec. 1 of the G.p.c., the fine is imposed in daily rates. Unless otherwise provided for in a specific provision, their number shall be between five and three hundred and sixty, see G. Grebing, *Probleme der Tagessatz-Geldstrafe*, „ZStW" 1988, p. 1049 et seq.; idem, *Recht und Praxis der Tagessatz-Geldstrafe*, „JZ" 1976, p. 745; J. Driendl, *Probleme der Geldstrafe nach der Reform*, „ZStW" 1988, p. 1137; H. Tröndle, *Die Geldstrafe in der Praxis und Probleme ihrer Durchsetzung unter besonderer Berücksichtigung des Tagessatzsystems*, „ZStW" 1986, p. 545; H.-H. Jescheck, G. Grebing, *Die Geldstrafe im deutschen und ausländischen Recht*, Baden-Baden 1978, p. 13 et seq.; H.-H. Jescheck, *Die Geldstrafe als Mittel moderner Kriminalpolitik in rechtsvergleichender Sicht*, [in:] H. v. Rüdiger, D. Kienapfel, H. Müller-Dietz (Hrsg.), *Kultur, Kriminalität, Strafrecht. Festschrift für Thomas Würtenberger zum 70. Geburtstag am 7.10.1977*, Berlin 1977, pp. 257–269; G. Klussmann Nochmals, *Das Geldstrafensystem des neuen Allgemeinen Teils des StGB und die Ratenzahlungsbewilligung*, „NJW" 1974, p. 1275; H. Zipf, *Die Geldstrafe in ihrer Funktion zur Eindämmung der kurzfristigen Freiheitsstrafe*, Berlin 1966, p. 63 et seq.; H. Radtke, [in:] B. v. Heintschel-Heinegg (Hrsg.), *op. cit*., § 40 N 30–31; H.-J. Albrecht, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit*., § 40 N 19 et seq.; E. Horn, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit*., § 40 N 4; J. Häger, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit*., p. 870 et seq.; T. Fischer, *op. cit*., pp. 328–329; K. Kühl, *op. cit*., pp. 247–248; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., pp. 611–619; BGH 26,

The German legislator provided for responsibility for the implementation of an attempt.[189] On the basis of criminalization of counterfeiting behaviour directed

325; BGH 27 176; BGHSt 34, 92. The amount of one daily fine rate is determined taking into account the personal and property conditions of the offender. This is taken into account by adopting the net income that the perpetrator achieves or could achieve on average in one day as the basis. The amount of one daily rate may not be lower than one thousand euros, nor may it exceed thirty thousand euros (§ 40 sec. 2 of the G.p.c.), see D. von Selle, *Gerechte Geldstrafe. Eine Konkretisierung des Grundsatzes der Opfergleichheit*, Berlin 1997, p. 119 et seq.; T. Vogt, *Die nachträgliche Bildung einer Gesamtgeldstrafe bei differierenden Tagessatzhöhen*, „NJW" 1981, pp. 899–902; B. Kadel, *Tagessatzsystem und Verschlechterungsverbot*, „GA" 1979, pp. 459–463; E. Horn, *Das Geldstrafensystem des neuen Allgemeinen Teils des StGB und die Ratenzahlungsbewilligung*, „NJW" 1974, p. 625; H. Radtke, [in:] B. v. Heintschel-Heinegg (Hrsg.), *op. cit.*, § 40 N 60–92; E. Horn, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 40 N 6–8; J. Häger, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit.*, p. 875 et seq.; BGH 30, 90, 96. The above argument should be supplemented with the issue of § 41 of the G.p.c. regulating the cumulative fine. Pursuant to that provision, if the perpetrator has obtained an advantage or attempted to obtain it through criminal offences, a fine which would otherwise not have been imposed or would have been imposed only on an optional basis may be imposed in addition to a custodial sentence, if deemed appropriate taking into account the personal and economic circumstances of the perpetrator, see R. Maurach, K.H. Gössel, H. Zipf, D. Dölling, Ch. Laune, J. Renzikowski, *Strafrecht Allgemeiner Teil. Erscheinungsformen des Verbrechens und Rechtsfolgen der Tat*, Heidelberg – München – Landsberg – Frechen – Hamburg 2014, § 59 N 32–33; W.H. Eberbach, *Zwischen Sanktion und Prävention*, „NStZ" 1987, pp. 486–487; P. Bockelmann, K. Volk, *Strafrecht, Allgemeiner Teil*, München 1987, p. 225; R. Schmitt, *Aktivierung des „Verfalls"!*, [in:] R. Hauser, J. Rehberg, G. Stratenwerth (Hrsg.), *Gedächtnisschrift für Peter Noll*, Zürich 1984, pp. 295–297; E. Schmidhäuser, *Strafrecht, Allgemeiner Teil*, Tübingen 1975, pp. 20–36; G. Kett-Straub, H. Kudlich, *op. cit.*, § 8 N 16 et seq.; E. Horn, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 41 N 7–9; J. Häger, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit.*, pp. 913–925; H. Radtke, [in:] B. v. Heintschel-Heinegg (Hrsg.), *op. cit.*, § 41 N 14–39; T. Fischer, *op. cit.*, pp. 337–338; K. Kühl, *op. cit.*, pp. 254–255; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 619–621; G. Jakobs, *op. cit.*, pp. 4–14; G. Grebing, *Probleme…*, *op. cit.*, pp. 745–749; F. Streng, *op. cit.*, p. 55 et seq.; R. Schmitt, *op. cit.*, pp. 295–297; BGH 26, 330; BGH 32 60; BGHSt 26 325 , 330; BGHSt 3 30, 32; BGHSt 17 35, 38.

[189] According to § 22 of the G.p.c., a criminal offence is attempted by a person who, in accordance with their idea of an act, directly seeks to commit it, see Ch. Jäger, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *Systematischer Kommentar zum Strafgesetzbuch. Band 2*, Köln 2019, § 22 N 15–35; C. Roxin, *Der Strafgrund beim untauglichen und beim tauglichen Versuch*, „GA" 2017, p. 656 et seq.; H. Frister, *Der Begriff „Verwirklichung des Tatbestandes" in § 22 StGB*, [in:] M.A. Zöller, H. Hilger, W. Küper, C. Roxin (Hrsg.), *Gesamte Strafrechtswissenschaft in internationaler Dimension: Festschrift für Jürgen Wolter zum 70. Geburtstag am 7. September 2013*, Berlin 2013, pp. 375–389; H. Putzke, *Der Strafbare Versuch*, „JuS" 2009, pp. 894–987; H.J. Hirsch, *Die subjektive Versuchstheorie, ein wegbereiter der NS-Strafrechtsdoktrin*, „JZ" 2007, pp. 494–501; idem, *Zur Behandlung des ungefährlichen „Versuchs" des lege lata und de lege ferenda*, [in:] O. Triffterer (Hrsg.), *Gedächtnisschrift für Theo Vogler*, München 2004, p. 31 et seq.; C. Roxin, *Zum ubeendeten Versuch des Einzeltäters*, [in:] R.D. Herzberg, H. Putzke (Hrsg.), *Strafrecht zwischen System und*

Telos: Festschrift für Rolf Dietrich Herzberg zum siebzigsten Geburtstag am 14. Februar 2008, Tübingen 2008, p. 341 et seq.; T. Hillenkamp, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar. Band 1*, Berlin 2006, pp. 1460–1648; C. Jung, *Die Vorstellung von der Tat beim strafrechtlichen Versuch*, „JA" 2006, pp. 228–229; Ch. Safferling, *Die Abgrenzung zwischen strafloser Vorbereitung und strafbarem Versuch im deutschen, europäischen und im Völkerstrafrecht*, „ZStW" 2006, p. 682 et seq.; H. Niehaus, *Der Begriff des Handeltreibens mit Betäubungsmitteln*, „JR" 2005, p. 192; T. Hillenkamp, *Zur „Vorstellung von der Tat" im Tatbestand des Versuchs*, [in:] B. Schünemann, H. Achenbach, W. Bottke, B. Haffke, H.-J. Rudolphi (Hrsg.), *Festschrift für Claus Roxin zum 70. Geburtstag am 15. Mai 2001*, Berlin – Boston 2001, p. 689 et seq.; H.J. Hirsch, *Untauglicher Versuch und Tatstrafrecht*, [in:] B. Schünemann, H. Achenbach, W. Bottke, B. Haffke, H.-J. Rudolphi (Hrsg.), *op. cit.*, p. 711 et seq.; C. Roxin, *Über den Strafgrund des Versuchs*, [in:] A. Eser, H. Nishihara (Hrsg.), *Festschrift für Haruo Nishihara zum 70. Geburtstag*, Baden-Baden 1998, p. 155 et seq.; J. Wolter, *Versuchsbeginn bei Einsatz eines sich selbstschädkge de Tatmittlers*, „NJW" 1998, p. 578 et seq.; G. Jakobs, *Kriminalisierung im Vorfeld einer Rechtsgutsverletzung*, „ZStW" 1997, pp. 751–761; B. Hardtung, *Gegen die Vorprüfung beim Versuch*, „Jura", 1996, p. 293; R.D. Herzberg, *Das vollendete vorsätzliche Begehungsdelikt als qualifiziertes Versuchs-, Fahrlässigkeits- und Unterlassungsdelikt*, „JuS" 1996, p. 377; W. Degener, *Strafgesetzliche Regelbeispiele und deliktisches Versuchen*, [in:] W. Küper, W. Stree, J. Wessels, F. Dencker (Hrsg.), *Beiträge zur Rechtswissenschaft: Festschrift für Walter Stree und Johannes Wessels zum 70. Geburtstag*, Heidelberg 1993, pp. 305–320; T. Vogler, *Der Beginn des Versuchs*, [in:] W. Küper, W. Stree, J. Wessels, F. Dencker (Hrsg.), *Beiträge zur Rechtswissenschaft: Festschrift für Walter Stree und Johannes Wessels zum 70. Geburtstag*, Heidelberg 1993, p. 300; G. Spendel, *Zur Neubegründung der objektiven Versuchstheorie*, [in:] G. Spendel (Hrsg.), *Studien zur Strafrechtswissenschaft. Festschrift für Ulrich Stock zum 70. Geburtstag am 8. Mai 1966*, Würzburg 1989, p. 109; B.R. Sonnen, T. Hansen-Siedler, *Die Abgrenzung des Versuchs von Vorbereitung u. Vollendung*, „JA" 1988, p. 17 et seq.; H. Walder, *Straflose Vorbereitung und strafbarer Versuch*, „SchwZStr" 1999, p. 225 et seq.; idem, *Strafrechtsdogmatik und kriminologie, dargestellt am Problem Vorbereitung oder Versuch?*, [in:] H. Göppinger, H.-J. Kerner, H. Leferenz, F. Streng (Hrsg.), *Kriminologie, Psychiatrie, Strafrecht: Festschrift für Heinz Leferenz zum 70. Geburtstag*, Heidelberg 1983, p. 537 et seq.; H.J. Hirsch, *Die Entwicklung der Strafrechtsdogmatik nach Welzel*, [in:] *Festschrift der Rechtswissenschaftlichen Fakultät zur 600-Jahr-Feier der Universität Köln*, Köln 1988, p. 399; J. Wolter, *Zugleich ein Beitrag zum Strafgrund der Vollendung*, (in:) H. Göppinger, H.-J. Kerner, H. Leferenz, F. Streng (Hrsg.), *Kriminologie, Psychiatrie, Strafrecht: Festschrift für Heinz Leferenz zum 70. Geburtstag*, Heidelberg 1983, p. 559 et seq,; J. Baumann, U. Weber, *Strafrecht, Allgemeiner Teil*, Bielefeld 1985, p. 474; U. Berz, *Grundlagen des Versuchsbeginns*, „Jura" 1984, pp. 511–518; K. Kühl, *Grundfälle zu Vorbereitung, Versuch, Vollendung u. Beendigung*, „JuS" 1980, p. 718 et seq.; C. Roxin, *Über den Tatentschluß*, [in:] W. Stree (Hrsg.), *Gedächtnisschrift für Horst Schröder*, München 1978, p. 158 et seq.; W. Sax, *„Tatbestand" und Rechtsgutverletzung*, „JZ" 1976, pp. 431–432; H. Blei, *Versuch und Rücktritt vom Versuch nach neuem Recht*, „JA", 1975, p. 95; C. Roxin, *Einführung in das neue Strafrecht*, München 1974, p. 15 et seq.; H.-H. Jescheck, *Wesen und rechtliche Bedeutung der Beendigung der Straftat*, [in:] G. Stratenwerth, A. Kaufmann, G. Geilen, H.J. Hirsch, H.-L. Schreiber, G. Jakobs, F. Loos (Hrsg.), *Festschrift für Hans Welzel zum 70. Geburtstag am 25 März 1974*, Berlin – New York 1974, p. 683 et seq.; C. Roxin, *Unterlasung, Vorsatz und Fahrlässigkeit, Versuch und Teilnahme im neuen Strafgesetzbuch*, „JuS" 1973, pp. 329–330; J. Hruschka, *Dogmatik der Dauerstraftaten u. das Problem der Tatbeendigung*, „GA" 1968, p. 193; P. Bockelmann, *Zur Abgrenzung der Vorbereitung vom Versuch*, „JZ" 1954, pp. 468–473; R. Rengier, *Strafrecht, Allgemeiner…*, *op. cit.*, pp. 293–328;

W. Gropp, A. Sinn, *op. cit.*, p. 361 et seq.; P. Bockelmann, K. Volk, *op. cit.*, p. 208 et seq.; G. Jakobs, *Strafrecht…*, *op. cit.*, p. 719 et seq.; R.D. Herzberg, K. Hoffmann-Holland, [in:] V. Erb, J. Schäfer (Hrsg.), *op. cit.*, § 22 N 9–13 et seq.; T. Fischer, *op. cit.*, pp. 185–203; K. Kühl, *op. cit.*, pp. 145–157; A. Eser, *op. cit.*, pp. 340–357; BGH 4 133; BGH 6 87; BGH 6, 387; BGH 12 306; BGH 20 196; BGH 21 17, 322; BGH 28, 163; BGH 31 182; BGH 35 8; BGH 38 165, 170; BGH 38 165; BGH 63, 147; BGH 83, 411; BGHSt 33 370, 374; BGHSt 48, 34, 35. The admissibility of prosecution for attempted crime has been limited. Pursuant to § 23 sec. 1 of the G.p.c., an attempt to commit a crime is always punishable, and in case of an offense only if the law clearly states so, see R. Zaczyk, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, Baden-Baden 2017, § 12 N 2; F.-Ch. Schroeder, *Das neue Bild des Strafgesetzbuchs*, „NJW" 1999, pp. 3612–3613; H.-H. Jescheck, T. Weigend, *op. cit.*, § 49 V 1; H.L. Günther, *Die Genese eines Straftatbestandes*, „JuS" 1978, p. 8; K. Binding, *Vier Forderungen an das künftige Reichsstrafgesetzbuch und eine fünfte an die Motive seines Entwurfs*, „GS", 1977, pp. 1–13; idem, *Der objektive Verbrechenstatbestand in seiner rechtlichen Bedeutung*, „GS", 1976, p. 112; P. Bockelmann *Strafrechtliche Untersuchungen: Zur Reform des Strafrechts*, Göttingen 1957, pp. 150–157; T. Fischer, *op. cit.*, pp. 203–204; K. Kühl, *op. cit.*, pp. 157–158; A. Eser, *op. cit.*, pp. 124–127; BGH 11 241; BGH 20 184. The crime is an unlawful act, the commission of which is penalized with a sentence of imprisonment not shorter than one year (§ 12 sec. 1 of the G.p.c.). The offence is an unlawful act, for the commission of which a prison sentence or a fine was provided (§ 12 para. 2 of the G.p.c.), see R.P. Calliess, *Der Rechtscharakter der Regelbeispiele im Strafrecht*, „NJW" 1998, p. 929; H.H. Jescheck, *Die Entwicklung des Verbrechensbegriffs in Deutschland seit Beling im Vergleich mit der österreichischen Lehre*, „ZStW" 1973, p. 179; J. Wessels, *Zur Problematik der Regelbeispiele für „Schwere" und „Besonderes Schwere Falle"*, [in:] R. Maurach, F.Ch. Schroeder, H. Zipf (Hrsg.), *Festschrift für Reinhart Maurach zum 70. Geburtstag*, Karlsruhe 1972, pp. 295–296; H. Schmidt, H. Weber, *Straftaten und Verfehlungen*, „NJ" 1967, p. 110; E. Dreher, *Zur Systematik allgemeiner Strafzumessungsgründe*, „GA" 1953, p. 129; H. Radtke, [in:] B. v. Heintschel-Heinegg, § 12 N 17; E. Hilgendorf, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit.*, pp. 694–702; T. Fischer, *op. cit.*, pp. 62–63; K. Kühl, *op. cit.*, p. 52; A. Eser, *op. cit.*, pp. 124–127; BGHSt 2 181; BGHSt 2 393, 394; BGHSt 3 47; BGHSt 4 226, 227; BGHSt 8 78, 79. An interpretation clause has been introduced, according to which the attempted offence may be more leniently punishable than the offence committed (§ 23 sec. 2 of the G.p.c.), see B. Niepoth, *Der untaugliche Versuch beim unechten Unterlassungsdelikt*, Frankfurt am Main – Berlin – Bern – New York – Paris – Wien 1994, p. 56 et seq.; E. Horn, *Gesamtwürdigung – Sinn und Unsinn eines Rechtsbegriffs*, [in:] G. Dornseifer, A. Kaufmann, E. Horn (Hrsg.), *Gedächtnisschrift Armin Kaufmann*, Köln 1989, p. 573; D.Ch. Dicke, *Zur Problematik des untauglichen Versuchs*, „JuS" 1968, pp. 157–158; E. Dreher, *Was bedeutet Milderung der Strafe für den Versuch?*, „JZ", 1956, p. 682; R. Zaczyk, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 23 N 4–13; C. Roxin, *Über den Strafgrund…*, *op. cit.*, p. 157 et seq.; R.D. Herzberg, K. Hoffmann-Holland, [in:] V. Erb, J. Schäfer (Hrsg.), *op. cit.*, § 23 N 16–32; T. Hillenkamp, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit.*, pp. 1620–1636; T. Fischer, *op. cit.*, p. 204; K. Kühl, *op. cit.*, pp. 157–158; A. Eser, *op. cit.*, pp. 124–127; BGH 1, 117; BGHSt 16 351; BGHSt 17 266, 267; BGHSt 41 10, 14; BGHSt 42 268, 273. Mention should be made of the particular structure of the attempt under § 23 sec. 3 of the G.p.c. If the perpetrator, out of gross ignorance, does not realize that the attempt could not have resulted in the effect at all due to the nature of the object or the means by which this act was to be committed, the court may waive the penalty or, at its discretion, mitigate the penalty, see J. Renzikowski, *Wahnkausalität und Wahndelikt – zur Strafbarkeit des untauglichen Versuchs*, [in:] M. Kaufmann (Hrsg.), *Wahn und Wirklichkeit – Multiple Realitäten*, Frankfurt am Main – Berlin – Bern – Bruxelles – New

against payment cards and some securities, it should be mentioned about the modified type (§ 152a sec. 3 of the G.p.c.). Aggravating elements include, on the one hand, action to achieve a financial gain, and, on the other hand, the commission of an act prohibited as a member of an organized criminal group (gang). A threat of more severe sanctions entails liability for imprisonment for a period of not less than six months and not exceeding ten years.[190] The last type of the first category is the act defined in § 152b sec. 1 of the G.p.c. In accordance with the above provision, the person who committed the act described in § 152a sec. 1 item 1 of the G.p.c. in relation to payment cards with a guarantee function, is liable to imprisonment of one to ten years.[191] On the basis of this prohibited act, there is distinction of two of its

York – Oxford – Wien 2003, pp. 309–318; R.D. Herzberg, *Zur Strafbarkeit des untauglichen Versuchs*, „GA", 2001, p. 257; B. Heinrich, *Die Abgrenzung von untauglichem, grob unverständigem und abergläubischem Versuch*, „Jura" 1998, p. 393; J. Rath, *Grundfälle zum Unrecht des Versuchs*, „JuS" 1998, pp. 1106–1113; F. Streng, *Der Irrtum beim Versuch – ein Irrtum?*, „ZStW" 1997, pp. 862–868; H. Radtke, *An der Grenze des strafbaren untauglichen Versuchs*, „JuS" 1996, pp. 878–882; E. Struensee, *Verursachungsvorsatz u. Wahnkausalität*, „ZStW" 1990, pp. 21–36; R. Zaczyk, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 23 N 16–20; R.D. Herzberg, K. Hoffmann-Holland, [in:] V. Erb, J. Schäfer (Hrsg.), *op. cit.*, § 23 N 39–54; T. Hillenkamp, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *op. cit.*, pp. 1636–1648; T. Fischer, *op. cit.*, pp. 205–206; K. Kühl, *op. cit.*, pp. 157–158; A. Eser, *op. cit.*, pp. 357–361; C. Roxin, *Über den Strafgrund…*, *op. cit.*, p. 157 et seq.; H.J. Hirsch, *Untauglicher…*, *op. cit.*, p. 719; C. Roxin, *Unterlasung…*, *op. cit.*, p. 330 et seq.; B. Niepoth, *op. cit.*, p. 55; BGH 10, 320; BGHSt 41 94, 95. As examples of attempted action under § 152a sec. 1 item 1 of the G.p.c., we can quote the implementation of a functional element that did not lead to the production of an imitation of a certain level of quality or when the altering of the IT system operating the financial instrument was unsuccessful, see W. Ruß, *op. cit.*, p. 59; T. Fischer, *op. cit.*, p. 1079; V. Erb, *op. cit.*, p. 824.

[190] W. Ruß, *op. cit.*, pp. 59–60.

[191] The term "payment card with a guarantee function" has been defined legally under the German Penal Code in § 152b sec. 4 items 1–2 of the G.p.c. The aforementioned card is credit cards and other cards that allow the issuer to carry out a guaranteed payment transaction and is specially protected against fraud by its pattern or coding. These should be cards in the so-called tripartite system, such as electronic wallets, or cards issued by retail chains, which entitle them to make payments to their members under the tripartite system, see I. Puppe, *Anmerkung zu BGH Urteil vom 21.09.2000 – 4 StR 284/00*, „JuS" 2001, p. 471 et seq.; S.P. Martin, *Rechtsprechungsübersicht*, „JuS" 2001, pp. 300–301; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 152b N 2–5; W. Ruß, *op. cit.*, pp. 61–62; T. Fischer, *op. cit*, p. 1081; K. Kühl, *op. cit.*, pp. 666–667; V. Erb, *op. cit.*, p. 826; R. Maurach, F-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 48; K.H. Schumann, *op. cit.*, p. 61 et seq.; D.D. Chiampi, *op. cit.*, p. 58 et seq.; BGH 38, 283; BGH 46 146. The element distinguishing the type under § 152b G.p.c. from that under § 152a of is that the object of the executive action should be covered by the principle of guaranteed payment. It is based on the assumption that a creditor who accepts the use of the card in order to pay the price, remuneration for the delivery of goods or the service provided has a guarantee of obtaining the cash benefit due to them, see H. Baier, *Konsequenzen für das Strafrecht bei Abschaffung des Euroscheckverkehrs*, „ZRP" 2001, p. 454; R. Hefendehl, *Strafrechtliche…*, *op. cit.*, pp. 348–349; BGHSt 38, 281; V. Erb, *op. cit.*, pp. 826–829.

modified types. The first – aggravated – included in § 152b sec. 2 of the G.p.c. The elements that imply an increase in the limits of the statutory penalty are acting in order to obtain a financial benefit, or committing an act as a member of an organized criminal group (gang).[192] It has the consequence of imprisonment for a period not shorter than two years. In turn, under § 152b sec. 3 of the G.p.c., two types of mitigated counterfeiting of payment card with a guarantee function were regulated. In both cases, more lenient criminal liability should be associated with the assumption of a minor accident.[193] In the scope of the first – relating to the prohibited act typified in § 152b sec. 1 of the G.p.c. – a prison sentence of three months to five years was provided for (§ 152b sec. 3 sentence 1 of the G.p.c.). As regards the second one – by modifying the aggravated type sanction from § 152b sec. 2 of the G.p.c. – the penalty of imprisonment for a period of not less than one year and not exceeding ten years is prescribed (§ 152b sec. 3 sentence 2 of the G.p.c.).

The second category includes crimes that amount to fencing a counterfeit. The type under § 146 section 1 item 2 of the G.p.c. should be analysed. A person who intends to circulate as authentic or to enable such circulation, acquires[194] or offers for

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Outside the scope of type protection, there are bank cards that only allow withdrawal of money from an ATM, telephone cards, loyalty cards, or such cards that allow its issuer to provide payment services in bilateral relations, see U. Weber, *Probleme der strafrechtlichen Erfassung des Euroscheck- und Euroscheckkartenmißbrauchs nach Inkrafttreten des 2. WiKG*, „JZ" 1987, pp. 215–218; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 152b N 4–11; W. Ruß, *op. cit.*, p. 62; T. Fischer, *op. cit.*, p. 1081; K. Kühl, *op. cit.*, pp. 666–667; V. Erb, *op. cit.*, pp. 826–827; H. Otto, *Mißbrauch…*, *op. cit.*, pp. 150–153; BGHSt 38 281, 283. The requirement to provide special protection against counterfeiting referred to in § 152b sec. 4 item 2 of the G.p.c. coincides with the reservation indicated on the basis of § 152a sec. 4 of the G.p.c. In fact, it is about proper protection of the guarantee payment card by means of its design or coding, see W. Ruß, *op. cit.*, p. 57; T. Fischer, *op. cit.*, p. 1076; K. Kühl, *op. cit.*, p. 664; V. Erb, *op. cit.*, p. 820; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1194; J. Eisele, *Fälschung…*, *op. cit.*, p. 747; T. Schnabel, *op. cit.*, p. 18; BGHSt 46 146, 148.

[192] W. Ruß, *op. cit.*, p. 63; H. Otto, *Mißbrauch…*, *op. cit.*, pp. 150–153; U. Weber, *Probleme…*, *op. cit.*, pp. 215–218.

[193] For the adoption of the mitigated form of counterfeiting of a payment card with a guarantee function within the scope of a classification covering an event of minor significance in addition to the damage caused or threatened, it may be important to temporarily, spatially or functionally link individual prohibited acts. The number of imitations produced and their quality, which translate into the specificity of the danger to economic turnover, are also important, see BGH 5 StR 349/00 Urteil vom 31.8.2000, NJW 2000, p. 3580.

[194] The question of the interpretation of an actual element consisting in obtaining counterfeit or altered money raised serious doubts in German judicial case-law. Initially, it was assumed that it was sufficient for the perpetrator to come into possession of the imitation or for the counterfeit to be under their control, see BGHSt 35 21, 22. This view was further developed and clarified that the mere achievement of the actual possibility of disposing of imitation is not sufficient for the subsumption under § 146 sec. 1 item 2 of the G.p.c. The implementation of prohibited behaviour is conditional on the perpetrator accepting counterfeit or processed money with the intention of disposing

sale counterfeit or altered money, is punishable by imprisonment for not less than one year.[195] In addition, responsibility for the aggravated type is provided for (§ 146

of it independently, see C. Prittwitz, *Grenzen der am Rechtsgüterschutz orientierten Konkretisierung der Geldfälschungsdelikte*, „NStZ" 1989, pp. 8–9; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 9; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 20 et seq.; idem, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 3*, „JZ" 1997, pp. 490–498; W. Ruß, *op. cit.*, p. 19; T. Fischer, *op. cit.*, p. 1063; K. Kühl, *op. cit.*, p. 654; V. Erb, *op. cit.*, p. 786; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1182–1184; J. Wessels, M. Hettinger, *op. cit.*, N. 903; BGHSt 3 154, 156; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 24; BGHSt 44 62. Such an approach allows for a distinction between perpetrators and ineffective forms of criminal cooperation, which is necessary in the case of those taking part in the transport, distribution or receipt of counterfeits, see BGHSt 44 62, 65. In the implementation of the causative action, both the primary and the derived method of acquisition were taken into account. The latter is possible through finding, stealing or embezzlement. In this context, the consent of the person entitled to dispose of the item is not important, see U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 9; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 28; W. Ruß, *op. cit.*, p. 19; T. Fischer, *op. cit.*, p. 1063; K. Kühl, *op. cit.*, p. 654; V. Erb, *op. cit.*, p. 788; H. Frister, *Der…*, *op. cit.*, pp. 553–559; see BGHSt 2 116; BGHSt 3 154, 156; BGHSt 42 196; BGHSt 44 62; RGSt 67 294, 296; cf W. Wohlers, *Anmerkung zum BGH, Urteil vom 31.1.1995 – 1 StR 495/94*, „StV" 1996, pp. 27–28; R. Hefendehl, *Der mißbrauchte Farbkopierer*, „Jura" 1992, pp. 374–379; J. Wessels, M. Hettinger, *op. cit.*, N. 902. Currently, there are no reservations that the perpetrator must obtain the right to dispose of a counterfeit independently or jointly and in consultation with the accomplice. A qualification covering the commission of an act when the perpetrator has the ability to exercise the right to dispose of the imitation of money independently – in accordance with their own will and in order to pursue their own interest – is also possible. The above leads to the admissibility of the presentation of charges under § 146 sec. 1 item 2 of the G.p.c., when the perpetrator carried out the transport of counterfeit money across the state border, being able to dispose of counterfeits on their own, see S. Cramer, *Anmerkung zum LG Gera NStZ-RR 1996, 73*, „NStZ" 1997, pp. 84–85; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 9; W. Ruß, *op. cit.*, p. 20; T. Fischer, *op. cit.*, p. 1063; K. Kühl, *op. cit.*, p. 654; V. Erb, *op. cit.*, p. 786–789; A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1182–1184; J. Wessels, *Zur Reform…*, *op. cit.*, pp. 669–673; J. Wessels, M. Hettinger, *op. cit.*, N. 929; C. Prittwitz, *op. cit*, p. 8; BGHSt 35 21, 22; BGHSt 44 62; cf. I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 20-21; H. Otto, *Grundkursk…*, *op. cit.*, § 75 N 9. In order to maintain the coherence of the system and the distinction between the types of § 146 sec. 1 item 2 and § 147 of the G.p.c., it is necessary to supplement the interpretative result with a requirement not contained in the text of the Act that the acquisition of an imitation take place from the perpetrator of the offence under § 146 sec. 1 item 1 of the G.p.c., i.e. directly from the counterfeiter, see V. Erb, *op. cit.*, p. 786.

[195] The offering of counterfeit or altered money for sale was also criminalised. It is indicated that the causative action consists in making available the purpose of the sale, visible by an external observer. It is stressed that the issue of public offering of counterfeit is important here. For prosecution it is insufficient that copies are presented to potential purchasers as part of individual offers. The offer should be addressed to an unspecified group of entities, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 45; W. Ruß, *op. cit.*, p. 20; V. Erb, *op. cit.*, pp. 788–789; S. Husemann, *op. cit.*, pp. 104–106; BGHSt 23 286–290.

sec. 2 of the G.p.c.). The stricter threat of punishment is supported by the implementation of element in order to achieve a financial benefit, or committing an act as a member of an organized criminal group (gang). In such a case, the perpetrator is liable to a custodial sentence of not less than three years. What also requires our attention are the modified types taking the form of minor cases (§ 146 sec. 3 of the G.p.c.). Pursuant to the above provision, an incident of minor significance relating to the type of § 146 sec. 1 item 2 of the G.p.c. was threatened with imprisonment from three months to five years (§ 146 sec. 3 sentence 1 of the G.p.c.). When a minor incident concerns an offence under § 146 sec. 2 of the G.p.c. – being a mitigated form in relation to the aggravated type – a penalty of one to ten years' imprisonment is provided for (§ 146 sec. 3 sentence 2 of the G.p.c.).

Next, the acts typified in § 152a sec. 1 item 2 of the G.p.c. should be interpreted. Pursuant to the above provision, whoever, in order to mislead in legal transactions or to enable such misleading, acquires, offers for sale, transfers or uses for themselves or someone else for counterfeit or altered checks, bills of exchange, payment cards or other material non-cash payment instruments, is liable to prosecution.[196] As part of the statutory threat, a penalty of imprisonment is provided for a period not exceeding five years or a fine. Pursuant to § 152a sec. 2 of the G.p.c., the attempt is also criminalized. In turn, in § 152a sec. 3 of the G.p.c. we find the aggravated type of fencing. Pursuant to that provision, imprisonment from six months to ten years is provided for the offender who committed the act in order to obtain a financial gain, or as a member of an organized criminal group (gang).

As part of the second category we should also mention the act under § 152b sec. 1 of the G.p.c. It typifies the conduct consisting in the commission of the offense under § 152a sec. 1 item 2 of the G.p.c. in relation to payment cards with a guarantee function.[197] The commission of the crime was linked with a penalty of imprisonment from one to ten years. Paragraph 152b sec. 2 of the G.p.c. includes the aggravated type of fencing payment card with a guarantee function. Modifying features include committing the act in order to obtain a financial benefit or as a member of an organized criminal group (gang). From the point of view of criminal law consequences, it carries a penalty of imprisonment for a period not shorter than two years. Within

[196] In contrast to the types of fencing discussed so far, the offence described in § 152a sec. 1 item 2 of the G.p.c. takes place also when the action is carried out for the benefit of a third party. The objective scope of the behaviour is also broader. It also includes the further use of previously produced imitations, see W. Ruß, *op. cit.*, p. 58; T. Fischer, *op. cit.*, pp. 1078–1079 ; K. Kühl, *op. cit.*, p. 665; V. Erb, *op. cit.*, pp. 822–823; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1194–1195; S. Husemann, *op. cit.*, pp. 104–106; BGHSt 23 286; BGHSt 44 62.

[197] W. Ruß, *op. cit.*, p. 63; V. Erb, *op. cit.*, p. 829; H. Tröndle, T. Fischer, *op. cit.*, § 152a N 4; T. Fischer, *op. cit.*, pp. 1076–1077; K. Kühl, *op. cit.*, p. 664; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1195; S. Husemann, *op. cit.*, pp. 104–106; BGHSt 46 146–148.

the framework of § 152b sec. 3 of the G.p.c. *in gremio* we can find two mitigated forms. In both cases, the lenient liability results from the adoption of a minor character of the case. The first – referring to the type under § 152b sec. 1 item 2 of the G.p.c. – provides for a penalty of three months to five years' imprisonment (§ 152b sec. 3 sentence 1 of the G.p.c.). The second, which refers to § 152b sec. 2 of the G.p.c., was subjected to a penalty of imprisonment from one to ten years (§ 152b sec. 3 sentence 1 of the G.p.c.).

The third category of distinguished behaviours groups the types of criminal circulation of imitations of money and its surrogates. It seems indispensable to discuss the offense under § 146 sec. 1 item 3 of the G.p.c. Pursuant to the above provision, whoever[198] circulates as authentic[199] counterfeit money that they have counterfeited,

[198] The German Penal Code treats access to imitation by its counterfeiting, altering or obtaining it in accordance with disposition of § 146 sec. 1 item 1 or 2 of the G.p.c. as a special, personal circumstances inseparable from the perpetrator within the meaning of § 28 sec. 2 of the G.p.c. The analyzed act constitutes an individual offense, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 30–33; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 16; T. Fischer, *op. cit.*, pp. 1063–1064; K. Kühl, *op. cit.*, p. 665; V. Erb, *op. cit.*, p. 790; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1184; D. Zielinski, *op. cit.*, pp. 193–195; BGHSt 44 62.

[199] Defining what constitutes the incriminated behaviour consisting in releasing an imitation into circulation is important not only for the interpretation of the type of prohibited act in question, but also for the offense typified in § 174 sec. 1 of the G.p.c. The counterfeit money is released into circulation if it "goes out of the control" of the perpetrator in such a way that another person has the opportunity to acquire possession of the imitation and proceed with it at their own discretion. As far as release into circulation is considered, the further actions of the acquirer concerning the falsified token are irrelevant. It is relevant to obtain unfettered competence to dispose of counterfeit money, see W. Ruß, *op. cit.*, p. 30; V. Erb, *op. cit.*, pp. 790–791; BGHSt 44 62. Two concepts of determining the interpretative framework of the causative action clash here. Considerations can be reduced to an attempt to answer whether we are dealing with circulation when the counterfeit is transferred to an entity that is aware of the lack of originality of the monetary token. The first of the votes is based on the results of the language directives of interpretation and leads to the assumption that the implementation of the causative action is any form of transfer of imitation, but only to an entity that remains unaware of the fact that it is counterfeit, see U. Stein, D. Onusseit, *Das Abschieben von gutgläublig erlangtem Falschgeld – LG Kempten*, „NJW" 1979, p. 225, „JuS" 1980, pp. 104–106; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 33; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 14a; W. Ruß, *op. cit.*, p. 22; T. Fischer, *op. cit.*, pp. 1063–1064; K. Kühl, *op. cit.*, pp. 654–655; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1183–1184; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 9; D. Zielinski, *op. cit.*, pp. 193–195; BHGSt 34 108, 110; BGHSt 35 21, 27; BGHSt 44 62, 66. Criminal liability under § 146 sec. 1 item 3 of the G.p.c. is justified in the case of releasing a counterfeit into circulation as an authentic, real legal tender. This circumstance does not exist when the transmission of counterfeits takes place between co-perpetrators or a person, who knows about the inauthenticity of the monetary token, see V. Erb, *op. cit.*, p. 791. In the opinion of some authors, a different view is excluded due to the possibility of

altered or acquired pursuant to requirements set out in § 146 sec. 1 item 1 or 2 of the G.p.c., is liable to prosecution. In this case the penalty provided is imprisonment for a term not shorter than one year. Comments are required by the aggravated type under § 146 sec. 2 of the G.p.c. Pursuant to the above provision, a person who committed an act in order to obtain a financial benefit or as a member of an organized criminal group (gang), is liable to imprisonment for a period not shorter than two years. In addition, two types of mitigated types of circulating imitations are provided for (§ 146 sec. 3 of the G.p.c.). Both are based on the design of a minor case. On the ground of § 146 sec. 3 sentence 1 of the G.p.c., in cases of minor gravity, regarding the act stipulated in section 1 item 3 of the G.p.c., the penalty is imprisonment from three months to five years. The second modified type, referring to the case of minor importance in the scope of the aggravated type, provides for the threat of imprisonment from one to ten years (§ 146 sec. 3 sentence 2 of the G.p.c.).

Next, the prohibited act under § 147 sec. 1 of the G.p.c. should be analysed. According to its content, criminal liability is imposed on whoever in other cases than those

violation of the *nullum crimen* principle and violation of the ban on analogies, see V. Erb, *op. cit.*, p. 792; J. Wessels, M. Hettinger, *op. cit.*, N 933; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 27; C. Prittwitz, *op. cit*, p. 8; BGHSt 29, 311. Supporters of the opposite view indicate that the provision should be interpreted in a way that avoids axiological contradictions. In case of doubt, interpretative results take precedence, which are devoid of purposeful-functional gaps. The above view makes it possible to qualify cases of both direct and indirect release of counterfeit money into circulation. No distinction is made in the direct transmission of an imitation to a person unaware of its forgery, but in the implementation of the same behaviour through a third party. Indirect marketing poses an analogous threat to the regularity of trade and the assault on the legal good. The transfer of counterfeit or falsified money to an intermediary or other entity aware of the inauthenticity of monetary tokens is a criminal offence when the perpetrator intends or accepts that the counterfeits come into the possession of a person acting in good faith, see W. Ruß, *op. cit.*, p. 22, 30–32; T. Fischer, *op. cit.*, pp. 1063–1064; K. Kühl, *op. cit.*, pp. 654–655; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1183–1184; R. Hefendehl, *Der…*, *op. cit.*, pp. 374–378; W. Stree, *Veräußerung…*, *op. cit.*, pp. 236–239; J. Wessels, M. Hettinger, *op. cit.*, N 933–937; J. Wessels, *Zur Reform…*, *op. cit.*, pp. 669–676; BGHSt 29 311, 313. The last view gained recognition in the jurisprudence of the Federal Court of Justice and the dominant part of the doctrine. It was assumed that the transfer of counterfeit money to an intermediary or other person aware that a given object is an imitation, falls within the scope of a functional elements of the type under § 146 sec. 1 item 3 and § 147 sec. 1 of the G.p.c., see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 34 and § 147 N 3–13; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 12, § 147 N 6; I. Puppe, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 2*, „JZ" 1986, pp. 992–993; idem, *Die neue Rechtsprechung zu den Fälschungsdelikten, Teil 3*, „JZ" 1997, pp. 490–499; U. Stein, D. Onusseit, *op. cit.*, pp. 104–106; W. Stree, *Veräußerung…*, *op. cit.*, pp. 236–239; R. Hefendehl, *Der…*, *op. cit.*, pp. 374–378; C. Prittwitz, *op. cit*, pp. 8–10; S. Bartholme, *op. cit.*, pp. 197–200; H. Otto, *Grundkurs…*, *op. cit.*, § 75 N 11; R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 27; BGHSt 1 143, 144; BGHSt 27 255, 259; BGHSt 29 311, 312; BGHSt 31 380, 382; BGHSt 32 68, 78; BGHSt 35 21, 23; BGHSt 42 162, 167.

indicated in § 146 of the G.p.c. puts into circulation as authentic counterfeit or converted money. In case of implementation of the criteria, there is a penalty of imprisonment not exceeding five years or a fine.[200] In addition, there is a provision for criminalisation of the stage of pre-perpetration of the prohibited act (§ 147 sec. 2 of the G.p.c.).

The last category includes preparatory activities for counterfeiting money or its surrogate.[201] The scope of the components of this form preceding the commission was listed *in gremio* in § 149 sec. 1 of the G.p.c. On the basis of the said provision, the preparatory action for the counterfeiting of money may consist in the creation, acquisition for oneself or someone else, storage or transfer of:[202] plates, forms, sets or printing blocks, negatives, matrices, computer software or other similar devices that, due to their properties, serve to commit a crime (§ 149 sec. 1 item 1 of the G.p.c.);[203] paper that is

[200] I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 147 N 2 et seq.; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 147 N 2; W. Ruß, *op. cit.*, pp. 29–33; T. Fischer, *op. cit.*, p. 1067; K. Kühl, *op. cit.*, pp. 656–657; V. Erb, *op. cit.*, pp. 796–799; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, pp. 1185–1186; W. Stree, *Veräußerung…*, *op. cit.*, pp. 236–239; R. Hefendehl, *Der…*, *op. cit.*, pp. 374–378; J. Wessels, M. Hettinger, *op. cit.*, pp. 933–937; J. Wessels, *Zur Reform…*, *op. cit.*, pp. 669–676; H. Otto, *Grundkurs…*, *op. cit.*, § 75 N 21 et seq.; BGHSt 29 311, 312.

[201] § 149 sec. 1 k.k.N. regulates *in gremio* the preparation for counterfeiting money and securities. The criminalisation of the pre-perpetration stage results from the need to sanction behaviours posing an abstract threat to the regularity of economic turnover in terms of currency and other values functioning within it, see V. Erb, *op. cit.*, p. 808. The functioning of the type and its independent character allows for a distinction between the stages of the "progression of crime". Attempts occur when the perpetrator exceeds the limits set by the interpreted type of offense, see W. Ruß, *op. cit.*, p. 42; D. Zielinski, *op. cit.*, p. 193; RGSt 63 3, 7.

[202] The manufacturing activity consists in the production of a specific object, so that, with the exception of minor amendments, it is ready for use as part of a criminal process, see W. Ruß, *op. cit.*, p. 44; RGSt 48 161, 165. Acquiring for yourself or someone else concerns gaining actual or legal control over a thing. The method and type of acquisition are irrelevant for the implementation of the element of this type, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 149 N 6; W. Ruß, *op. cit.*, p. 44; T. Fischer, *op. cit.*, p. 1070; K. Kühl, *op. cit.*, p. 659; V. Erb, *op. cit.*, pp. 809–810; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1190. The transfer occurs when the custody over a specific object passes from the perpetrator to another person. The issues of the timespan of the transfer or the method of acquisition are irrelevant, see W. Ruß, *op. cit.*, p. 44; T. Fischer, *op. cit.*, p. 1070; K. Kühl, *op. cit.*, p. 659; V. Erb, *op. cit.*, pp. 809–810.

[203] The plates contain an image of what is to be the object of falsification by casting or printing in metal, paper or other material, see RGSt 55 46, 47. Negatives within the meaning of § 149 sec. 1 point 1 of the G.p.c. are only such plates that can be used for the production of counterfeits. Outside the scope of this regulation, there are such photographic materials that can only serve as a substitute of the design, in relation to the original, see W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1189; RGSt 65 203, 204. Computer software should be fit to commit money counterfeiting. At least one coding element or command developed under the software must be created to be used for counterfeiting or altering of currency. Hence, payment card readers used to decode the record on a magnetic strip or chip, the so-called skimmers are also covered by the objective scope of this

identical or deceptively similar to paper intended for the production of money and which is specially protected against counterfeiting (§ 149 sec. 1 item 2 of the G.p.c.);[204] holograms or other elements of money used to protect it from counterfeiting (§ 149 sec. 1 item 3 of the G.p.c.).[205] The admission of preparation for counterfeiting legal tender was subject to a penalty of imprisonment for a period not exceeding five years or a fine.

The last noteworthy issue concerning the protection of money by the means provided for in criminal law is that of a particular form of active repentance.[206]

provision, see T. Fischer, *op. cit.*, p. 1070. Other devices which, under this provision, are the object of the executive action must, by virtue of their characteristics, be capable of counterfeiting or altering money or securities. We are talking about items that, due to their specificity, are used for counterfeiting. The specificity is to result from the functional similarity to the objects clearly indicated in the content of the provision. This excludes simple, uncomplicated tools such as hammers, chisels, cameras, printing machines or copiers, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.) *op. cit.*, § 149 N 4; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 149 N 4–5; W. Ruß, *op. cit.*, p. 43; V. Erb, *op. cit.*, pp. 808–809; T. Fischer, *op. cit.*, pp. 1070–1071; K. Kühl, *op. cit.*, pp. 659–660; H. Tröndle, T. Fischer, *op. cit.*, § 149 N 3; RGSt 65 203. An additional element is "suitability" of the tool for a specific purpose, i.e. counterfeiting. This feature does not exclude the need to use or obtain additional elements together or separately, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 149 N 6; W. Ruß, *op. cit.*, p. 43; RGSt 48 161, 165; RGSt 55 283, 284; RGSt 65 203; RGSt 69 305, 306

[204] Within the framework of the executive activity it enumerates paper that serves or beguilingly resembles the one used to produce the original monetary tokens or securities. In addition, the paper should be specially protected against counterfeiting. The special method of protection can be manifested by the use of a watermark or specific fibres, see W. Ruß, *op. cit.*, p. 44. The striking resemblance of paper occurs when a document made out of it is able to mislead the average observer, who does not have specialist knowledge, and does not submit a monetary token or a document for thorough analysis, see S. Bartholme, *Zum Begriff des Falschgeldes in Abgrenzung zum untauglichen Tatmittel*, „JA" 1994, p. 97 et seq.; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 149 N 5; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 149 N 5; T. Fischer, *op. cit.*, p. 1071; K. Kühl, *op. cit.*, p. 660; V. Erb, *op. cit.*, p. 809; W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1190; H. Tröndle, T. Fischer, *op. cit.*, § 149 N 3; R. Hefendehl, *Zur…*, *op. cit.*, pp. 353–356.

[205] It is indicated that holograms are a special type of security for money and its surrogates, which reproduces a three-dimensional image. This element is usually made of metal-coated plastic film. "Other elements", on the other hand, include both present and future forms of security features and any components that are inextricably linked to printing or paper. These can be, for example, components of printing inks used for the production of original monetary tokens, or security strips, see T. Fischer, *op. cit.*, p. 1071.

[206] The active repentance is regulated under § 24 sections 1 and 2 of the G.p.c. Pursuant to § 24 sec. 1 of the G.p.c., anyone voluntarily refrains from the further implementation of the prohibited act or prevents its performance, shall not be prosecuted for attempt. If the act was not committed without the intervention of the departing party, they are not punished as long as they have undertaken voluntary and significant efforts to prevent the commission, see G. Küpper, *Rücktritt vom Versuch eines Unterlassungsdelikts – BGH*, „NStZ" 1997, p. 485, „JuS" 2000, p. 229; U. Kindhäuser, T. Zimmermann, *Strafrecht, Allgemeiner Teil*, Baden-Baden 2020, § 32 N 13;

W. Mitsch, *Fehlgeschlagener Versuch und Rücktritt beim unechten Unterlassungsdelikt*, [in:] M. Böse, K.H. Schumann, F. Toepel (Hrsg.), *Festschrift für Urs Kindhäuser zum 70. Geburtstag*, Baden-Baden 2019, p. 293 et seq.; H. Otto, *Fehlgeschlagener Versuch und Rücktritt*, „GA" 1967, p. 144; idem, *Fehlgeschlgener Versuch und Rücktritt*, „Jura" 1992, p. 423 et seq.; H.-U. Paeffgen, *Rücktrittshorizont vs. Fehlgeschlagener Versuch*, [in:] H.-U. Paeffgen, M. Böse, U. Kindhäuser, S. Stübinger, T. Verrel, R. Zaczyk (Hrsg.), *Strafrechtswissenschaft als Analyse und Konstruktion, Festschrift für Ingeborg Puppe zum 70. Geburtstag*, Berlin 2011, pp. 791–809; B. Pahlke, *Rücktritt bei dolus eventualis*, Berlin 1993, p. 117; I. Puppe, *Strafrecht, Allgemeiner Teil im Spiegel der Rechtsprechung*, 2009, p. § 21 N 37; C. Roxin, *Der fehlgeschagene Versuch*, „JuS" 1981, p. 1 et seq.; idem, *Der fehlgeschlagene Versuch – eine Kapazität vergeudende, überflüssige Rechtsfigur?*, „NStZ" 2009, p. 319; T. Schmidt, *Der Rücktritt vom versuchten Unterlassungsdelikt durch weiteres Unterlassen*, Göttingen 2018, pp. 17–31; F. Zieschang, *Anforderungen an die Vollendungsverhinderung beim beendeten Versuch gemaß § 24 I 1, 2 Alt. StGB*, „GA" 2003, pp. 353–358; G. Zwiehoff, *Das Rücktrittsverhalten beim beendeten Versuch*, „StV" 2003, p. 631 et seq.; R. Zaczyk, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 24 N 19; H. Lilie, D. Albrecht, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar. Band 1*, Berlin 2006, p. 1653 et seq.; K. Hoffmann-Holland, [in:] V. Erb, J. Schäfer (Hrsg.), *op. cit.*, § 24 N 16 et seq.; T. Fischer, *op. cit.*, pp. 208–227; K. Kühl, *op. cit.*, pp. 159–172; A. Eser, *op. cit.*, pp. 362–389; J. Wessels, W. Buelke, H. Satzger, *op. cit.*, p. 1064; BGHSt 4 172, 179; BGHSt 33, 295; BGHSt 35, 90; BGHSt 40, 304; BGHSt 40, 75. If several criminally cooperating persons participate in the act, everyone may withdraw from the act regardless of the involvement of others. Voluntary and significant efforts to prevent the commission guarantee immunity from prosecution when the execution did not take place independently of the perpetrator's intervention, or when the act was committed in isolation from their previous cooperation (§ 24 sec. 2 of the G.p.c.), see K. Amelung, *Zur Theorie der Freiwilligkeit eines strafbefreienden Rücktritts vom Versuch*, „ZStW" 2008, p. 205 et seq.; H. Boß, *Der halbherzige Rücktritt*, Berlin 2002, p. 36 et seq.; Ch. Brand, T. Wostry, *Kein Rücktritt vom beendeten „fehlgeschlagenen" Versuch?*, „GA" 2008 p. 611; A. Engländer, *Die hinreichende Verhinderung der Tatvollendung – BGH*, „NJW" 2003, p. 1058, „JuS" 2003, p. 641 et seq.; Ch. Fahl, *Der „fehlgeschlagene Versuch" – ein „Fehlschlag"?*, „GA" 2014, p. 452; K.H. Gössel, *Der fehlgeschlagene Versuch: Ein Fehlschlag*, „GA" 2012, p. 65 et seq.; R.D. Herzberg, *Problemfälle des Rücktritts durch Verhindern der Tatvollendung*, „NJW" 1989, p. 862 et seq.; H. Kudlich, K.A. Hannich, *Strafbefreiender Rücktritt auch vom untauglichen Versuch eines Unterlassungsdelikts*, „StV" 1998, p. 370 et seq.; Ch. Jäger, *Das Freiwilligkeitsmerkmal beim Rücktritt vom Versuch – Ein Beitrag zur Angleichung von Täterschafts- und Rücktrittslehre*, „ZStW" 2000, p. 783; H.-H. Jescheck, *Versuch und Rücktritt bei Beteiligung mehrerer Personen an der Straftat*, „ZStW" 1987, p. 111; F. Streng, *Rücktritt vom erfolgsqualifizierten Versuch? – Die aufzugebende „Tat" i.S.v. § 24 Abs. 1 StGB und das Analogieverbot*, [in:] M. Hettinger, T. Hillenkamp (Hrsg.), *Festschrift für Wilfried Küper zum 70. Geburtstag*, Heidelberg 2007, p. 629; G. Wolters, *Der Rücktritt beim „erfolgsqualifizierten" Delikt*, „GA" 2007, p. 65 et seq.; L. Wörner, *Der so genannte fehlgeschlagene Versuch zwisches Tatplan und Rücktrittshorizont – zugleich eine Besprechung von BGH 2 StR 576/08. Urteil vom 20.05.2009*, „NStZ" 2010, pp. 66–71; R. Zaczyk, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 24 N 1 et seq.; H. Lilie, D. Albrecht, [in:] H.W. Laufhütte, R. Rissing-van Saan, K. Tiedemann (Hrsg.), *Strafgesetzbuch Leipziger Kommentar. Großkommentar. Band 1*, Berlin 2006, p. 1653 et seq.; K. Hoffmann-Holland, *op. cit.*, § 24 N 16 et seq.; T. Fischer, *op. cit.*, pp. 208–227; K. Kühl, *op. cit.*, pp. 159–172; A. Eser, *op. cit.*, pp. 362–389; J. Wessels, W. Buelke, H. Satzger, *op. cit.*, p. 1064; BGHSt 4 172, 179; BGHSt 33, 295; BGHSt 35, 90; BGHSt 40, 304; BGHSt 40, 75.

Application of this institution is conditioned by the cumulative occurrence of two circumstances. The first of the conditions for immunity of the perpetrator from prosecution is included in § 149 sec. 2 item 1 of the G.p.c. Pursuant to the said provision, there is no penalty for preparation for those who voluntarily abandon it[207] and prevent the danger it caused, and in the event of entering into an agreement with another person, prevents the continuation of preparation or commission.[208] The second condition is described in § 149 sec. 2 item 2 of the G.p.c. According to its content, there is no penalty for anyone who destroys or renders useless tools used for counterfeiting, as long as these tools can still be used.[209] Moreover, the perpetrator may disclose information about them or provide it to the competent authority. It is worth mentioning that if the danger of cooperating in the preparation or implementation of the crime was avoided without the participation of the perpetrator, what is sufficient for immunity – in place of the condition described in § 149 sec. 2 item 1 of the G.p.c. – is to undertake voluntary, significant efforts to achieve this objective (§ 149 sec. 3 of the G.p.c.).[210]

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[207] The precondition for taking advantage of immunity from prosecution is the voluntary withdrawal from preparation. This requirement is not met when the perpetrator fails to continue the activities preceding counterfeiting due to the subjective belief that the tools collected are unfit for use, despite their objective suitability, see U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 149 N 9; W. Ruß, *op. cit.*, p. 45; T. Fischer, *op. cit.*, p. 1072; K. Kühl, *op. cit.*, pp. 660–661; A. Eser, *op. cit.*, pp. 362–389.

[208] In order to benefit from immunity, it is necessary to lift the abstract danger arising from the continued functioning of tools used for counterfeiting in legal trade. It is necessary for the perpetrator to take certain actions conditioned by the risk of their use, see V. Erb, *op. cit.*, p. 811. The perpetrator should completely remove the threat. There is no such premise when the perpetrator reduces or eliminates only part of the risk associated with their participation. The act is still punishable when the perpetrator fails to eliminate the threats in accordance with the law. There is no reason to override the punishability of an act when the perpetrator is aware of the elimination of the aforementioned risks due to the occurrence of causes other than their activity, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 149 N 17; T. Fischer, *op. cit.*, pp. 208–227; K. Kühl, *op. cit.*, pp. 159–172; H. Tröndle, T. Fischer, *op. cit.*, § 149 N 9.

[209] Averting the danger that leads to immunity from prosecution may also occur by preventing the commission of a crime due to destroying or rendering useless the tools used to commit a prohibited act, see I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 149 N 15; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 149 N 8; W. Ruß, *op. cit.*, p. 46; V. Erb, *op. cit.*, p. 811.

[210] U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.) *op. cit.*, § 149 N 7; W. Ruß, *op. cit.*, p. 46; A. Eser, *op. cit.*, pp. 362–389; T. Fischer, *op. cit.*, pp. 208–227; K. Kühl, *op. cit.*, pp. 159–172; D. Zielinski, *op. cit.*, pp. 193–197.

B. Austria (Penal Code of 23 January 1974)[211]

Provisions typifying acts constituting attacks on the circulation of money and securities can be found in the Special Part, Section 13, entitled "Offences against the security of transactions in money, securities, stamps and non-cash legal tender".

Under Austrian law, offences against the sound functioning of the financial market can be classified into the framework of four categories. The first includes counterfeiting money and its surrogates (§ 232 sec. 1 and sec. 3 of the A.p.c.) and non-cash legal tender (§ 241a of the A.p.c.). The second is the types of fencing counterfeit currency and other legal tenders (§ 232 sec. 2 of the A.p.c) and domestic (§ 241b of the Ap.c.) or foreign (§ 241f of the A.p.c.) non-cash legal tender. As part of the third, the introduction of counterfeits of money to trading should be distinguished (§ 233 of the A.p.c.). The last category is the preparation for counterfeiting of money and its surrogates (§ 239 of the A.p.c.) and non-cash legal tender (§ 241c of the A.p.c.). A detailed explanation will be preceded by two general comments. The first will concern the characteristics of the objects of the enforcement action whose criminal law protection has been equated with that provided for money (§ 237 and § 241 of the A.p.c.). The second will refer to the relationship of the title offences with the territorial scope of application of the Austrian Penal Code (§ 64 sec. 1 item 4 of the A.p.c.). The analysis will be concluded by reflections on the institution of active repentance in relation to the falsification of currency and its surrogates (§ 240 of the A.p.c.) and non-cash legal tender (§ 241d and § 241g of the A.p.c.).

Before we proceed to further considerations, we must first discuss some preliminary issues. The first will be the indication of the interpretative rule of § 237 of the A.p.c., which includes the list of carriers of the legal good of some of the offences stipulated in Section 13 that are non-monetary. In accordance with the above provision, the implementation of the acts described in § 232, § 233 or § 236 of the A.p.c. is punishable also in relation to banknotes or coins that are not legal tender, and also to pledges, bonds, shares or other participation certificates, interest coupons, dividend coupons or renewal coupons. The condition limiting the application of the said directive is (from the perspective of the trading procedure) the issue of specified bearer securities. Moreover, the provisions of Section 13 apply to foreign money, securities, tokens and banknotes and coins intended for issue as legal tender (§ 241 of the A.p.c.). This extends the scope of offences to a currency other than the national currency and its surrogates and to coins and banknotes that are intended for issue but have not been put into circulation. The topic of responsibility for an act committed abroad also seems

[211] Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (source: https://www.ris.bka.gov.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296 [access: 1.01.2021]), hereinafter referred to as A.p.c.

interesting. Pursuant to § 64 sec. 1 point 4 of the A.p.c., Austrian criminal law should be applied regardless of the provisions in force at the place of committing, in the case of committing: counterfeiting of money (§ 232 of the A.p.c.), putting a counterfeit into circulation (§ 233 of the A.p.c.) or analogous actions against securities (§ 237 of the A.p.c.), provided that the act harmed the interests of Austria or when the perpetrator is not subject to extradition. The definition of the concept of the "interest of Austria", which is a criterion for the application of the Penal Code, should be considered relevant. The infringement of the "interests of Austria" results from the production and acceptance of counterfeit money for the purpose of using it as genuine in the territory of Austria.[212] It is also important that interests are affected not only in the case of the implementation of a set of elements of type, but also in the stages preceding the commission.[213] Where the implementation of the offence concerns currencies of third countries or foreign securities, the determination of Austria's interest shall take place by establishing that those assets were to be put into circulation in Austria.[214]

We should indicate the act typified in § 232 sec. 1 of the A.p.c. According to its content, whoever intends to market as authentic and unchanged counterfeits or alters money is subject to criminal liability.[215] The implementation of the element of the type is punishable with a penalty of from one to ten years' imprisonment.[216] It is worth paying attention to the interpretative directive from § 232 sec. 3 of the A.p.c. It is justified by the fact that it resolves the interpretative problem related to the qualification of behaviour in terms of the implementation of currency counterfeit. In accordance with the above provision, counterfeiting also occurs when money is created using devices or materials intended for its legal production. Assignment of responsibility is only

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[212] F. Salimi, [in:] F. Höpfel, E. Ratz (Hrsg.) *Wiennner Kommentar zum Strafgesetzbuch*, Wien 2016, § 62–67 Rz 9; E. Fabrizy, *Strafgesetzbuch und ausgewählte Nebengesetze*, Wien 2018, § 64 Rz. 1.

[213] K. Schwaighofer, [in:] O. Triffterer, C. Rosbaud, H. Hinterhofer, *Salzburger Kommentar zum Strafgesetzbuch*, Wien 2019, § 64 Rz 1; A. Tipold, [in:] O. Leukauf, H. Steininger (Hrsg.), *Strafgezetzbuch. Kommentar*, Wien 2020, § 62–67, § 64 Rz. 4.

[214] Rechtssatz der Oberste Gerichtshof von 28.06.1977, 9 Os 63/77, EvBl 1977/263, https://www.ris.bka.gv.at/Dokumente/Justiz/JJR_19770628_OGH0002_0090OS00063_7700000_001/JJR_19770628_OGH0002_0090OS00063_7700000_001.pdf [access: 12.12.2022]; Rechtssatz der Oberste Gerichtshof von 27.03.2003, 15 Os 37/03, EvBl 2003/123, https://www.ris.bka.gv.at/Dokumente/Justiz/JJR_20030327_OGH0002_0150OS00037_0300000_001/JJR_20030327_OGH0002_0150OS00037_0300000_001.pdf [access: 1.12.2022]; cf K. Schwaighofer, [in:] O. Triffterer, C. Rosbaud, H. Hinterhofer (Hrsg.), *op. cit.*, § 64 Rz 49.

[215] D. Kienapfel, [in:] E. Foregger, F. Nowakowski (Hrsg.), *Wiener Kommentar zum Strafgesetzbuch*, Wien 1986, § 232 N 13–22; E. Foregger, G. Kodek, E. Fabrizy, *Strafgesetzbuch (StGB) samt den wichtigsten Nebengesetzen. Kurzkommentar*, Wien 1997, § 232 N III; Ch. Bertel, K. Schwaighofer, *Österreichisches Strafrecht. Besonderer Teil II (§§ 169 bis 321 StGB)*, Wien – New York 1997, § 232 N 3.

[216] The penalty of imprisonment is described in § 18 of the A.p.c. The sanction may take the form of life imprisonment or timely isolation of the perpetrator (sec. 1). To describe it in more detail, the term of imprisonment may not be shorter than one day, nor exceed twenty years (sec. 2).

possible in the absence of the authorisation and grounds under which the competent authorities are authorised to issue money and where the perpetrator acted without their consent. Mention should be made of the behaviour typified in § 234 sec. 1 of the A.p.c., which resembles an offence under Art. 176 of the Polish Penal Code of 1932. Pursuant to this provision, whoever decreases the value of the bullion coin intending to put it into circulation as full-value one, is liable to a penalty of imprisonment from six months to five years.

The last type of the first category is the counterfeiting of other legal tenders, which is detached from the physical monetary token (§ 241a sec. 1 of the A.p.c.). On the basis of that provision, whoever, in order to use it in legal transactions as authentic legal tender, counterfeits non-cash legal tender or, in the same intention, alters authentic non-cash legal tender, is liable to prosecution.[217] The execution of the elements of the act was punishable by a penalty of imprisonment for a period not exceeding three years. The Austrian legislator has provided for the aggravating elements for counterfeiting of non-cash legal tender. In this context, a higher than typical penalty is justified by the motivation of the perpetrator or the implementation of the act within specific structures. Pursuant to § 241a sec. 2 of the A.p.c., whoever commits a prohibited act in order to achieve a benefit or as a member of an organized criminal group, is liable to the penalty of imprisonment from six months to five years.

It is worth noting the differences in the scope of the statutory penalty between the counterfeiting of money and its surrogates and the counterfeiting of non-cash legal tender. This issue is interesting due to the disproportion in sanctions for both types, which translates into more intensive protection of traditional money. This assumption is surprising because non-cash legal tenders have *de facto* analogous goals and functions as fiat money. We find no justification for this significant difference in the range of the penalty of imprisonment. It should be indicated that the Austrian legislator is consistent in their assumption, because similar differences on the grounds of statutory penalty will be observed in the frameworks of crimes included in all distinguished categories.

The second category grouped acts that can be reduced to the fencing of a counterfeit. Attention should be paid to the type of § 232 sec. 2 of the A.p.c. This provision indicates that also those who, with the intention of putting into circulation as authentic and unchanged, accept counterfeit or converted money with the consent of the perpetrator of counterfeiting (§ 12 of the A.p.c.) or an intermediary is liable to

[217] Pursuant to § 74 sec. 1 point 10 of the A.p.c., any personal or transferable physical legal tender that identifies the issuer, and is protected against forgery or unauthorized use by means of a code, specimen or signature and performs a function representing cash in legal transactions or serves to issue cash, should be considered a non-cash payment instrument.

prosecution.[218] As far as penalty is considered, a reference to the threat of a sanction provided for in the type of § 232 sec. 1 of the A.p.c. was made.

The act included in § 234 sec. 2 item 1 of the A.p.c. must be considered a particular form of fencing an imitation. Specificity of the type applies to the object of the

[218] It is necessary to signal the essence of § 12 of the Code of Criminal Procedure, which is important for assigning responsibility for criminal cooperation on the basis of the single perpetration model (*Einheitstätersystem*). Discussion of this topic goes beyond the framework and requirements of this study. The most important elements of the Austrian model of liability will be indicated, which will be sufficient to understand the act of § 232 sec. 2 of the A.p.c. According to § 12 of the A.p.c., a prohibited act is committed not only by the direct perpetrator, but also by anyone who induces another person to commit such an act or who in any way contributes to its commission. The aforementioned normative structure allows for the introduction of a distinction between the categories of perpetrators, see K. Schmoller, *Grundstrukturen der Beteiligung mehrer an einer Straftat – die objektive Zurechnung fremden Vehaltens*, „ÖJZ" 1983, H. 13, p. 347; D. Kienapfel, *Grundriß des österreichischen Strafrechts. Allgemeiner Teil*, Wien 1998, p. 192 et seq.; W. Friedrich, *Strafbare Beteiligung – akzerssorische oder originäre Täterschaft? Ein Beitrag zur Auslegung der §§ 12 bis 15 oStGB*, [in:] K. Schmoller (Hrsg.), *Festschrift für Otto Triffterer zum 65. Geburtstag*, Wien – New York 1996, p. 45 et seq.; idem, *Zum gegenwärtigen Stand der Lehre von der Einheitstäterschaft in der höchstrichterlichen Praxis*, „ÖJZ" 1979, H. 4, pp. 90–94; O. Triffterer, Die *österreichische Beteiligungslehre*, Wien 1983, p. 33 et seq. We should distinguish between the direct perpetrator (*unmittelbarer Täter*), the instigating perpetrator (*Bestimmungstäter*) and abbetor (*Beitragstäter*), see D. Kienapfel, *Der Einheitstäter im Strafrecht*, Frankfurt am Main 1971, p. 37 et seq.; idem, *Die Einheitstäterregelung der §§ 12 und 32 ff StGB Grundlagen, System und Auslegung*, „JBl" 1974, 96 J, H 5–6, p. 113 et seq. According to the dominant position, a direct perpetrator should be understood as the one who independently carries out the element of an action specified in the structure of the type of prohibited act, see M. Burgstaller, *Der Versuch nach § 15 StGB*, „JBl" 1976, H 5–6, p. 402; W. Wegscheider, *Zur Konkurrenz von Bestimmungstäter und Beitragstäterschaft (§ 12 2. Und 3 Alt StGB)*, „RZ" 1979, p. 165; W. Schild, *Die Täterformen des § 12 StGB*, „ZfRV" 1976, H 4, p. 187; H. Zipf, *Die mittlebare Täterschaft und ihre Einordnung in § 12 StGB*, „ÖJZ" 1975, H. 23, p. 617. Responsibility for the incitement will be borne by the person who induced another person to commit the offence. To avoid delving into details, it should be emphasized that it covers any behaviour by which the perpetrator deliberately induces another person to commit a crime. This may take the form of a promise, threat, request or order, see O. Triffterer, *Österreichisches Strafrecht. Allgemeiner Teil*, Wien – New York 1985, p. 402; H. Fuchs, *Österreichisches Strafrecht. Allgemeiner Teil*, Wien – New York 1998, pp. 298–299; W. Friedrich, *op. cit.*, pp. 44–57; K. Schmoller, *op. cit.*, p. 344. The third type of action is abetting. This category of causative behaviour includes any intentional or unintentional contribution to the commission of a prohibited act, see E.E. Fabrizy, [in:] E. Foregger, F. Nowakowski, E.E. Fabrizy (Hrsg.), *Wienner Kommentar zum Strafgesetzbuch*, Wien 1992, p. 24; A.M. Detzer, *Die Problematik der Einheitstäterlösung*, Erlangen-Nürnberg 1972, p. 68 et seq.; H.-H. Jescheck, T. Weigend, *Lehrbuch des Strafrechts. Allgemeiner Teil*, Berlin – New York 1996, pp. 645–646; D. Kienapfel, *Grundriß…*, *op cit.*, p. 220; H. Fuchs, *op. cit.*, p. 322; O. Triffterer, *op. cit.*, p. 409. All those involved in committing the crime are its perpetrators, see M. Burgstaller, *Zur Täterschaftsregelung im neuen StGB*, „ORiZ" 1975, 53 J, H. 2, p. 13; P. Hünerfeld, *Beteiligung mehrerer an einem Verbrechen – Einheitstäterschaft oder Differenzierung unterschiedlicher Formen der Beteiligung?*, [in:] *Strafrechtsreform in der Bundesrepublik Deutschland und in Italien*, Freiburg im Breisgau 1981, pp. 115–117; W. Friedrich, *op. cit.*, p. 43 et seq.; K. Schmoller, *op. cit.*, p. 338.

executive action, which is a bullion coin with reduced value. According to the said provision, whoever, with the intent of transferring it as a full-value one, accepts such a coin from another person, or acquires it in any other way, is liable to prosecution. A penalty of up to three years' imprisonment may be imposed on the perpetrator. The Austrian legislator also provided for circumstances aggravating the type of currency fencing (§ 234 sec. 2 item 1 sentence 3 of the A.p.c.). The element implying a stricter penalty is the commission of a prohibited act against reduced-value bullion coins, the nominal value of which exceeds a total of three hundred thousand euros. In this case, the offender is punishable with between six months and five years' imprisonment.

Speaking of fencing of non-cash means of payment, it is worth noting the distinction that occurs on the basis of the Austrian Penal Code. The legislator distinguished the implementation of causative actions in relation to domestic (§ 241b of the A.p.c.) and foreign legal tender (§ 241f of the A.p.c.). Whoever, with the intent to use it in trade as authentic, accepts, obtains for themselves or someone else, carries, transfers or otherwise acquires counterfeit or altered non-cash legal tender, is liable to prosecution for fencing. The implementation of elements of this type was threatened with imprisonment for a period not exceeding one year, or a fine of up to seven hundred and twenty daily rates.[219] Fencing of foreign legal tender is included in § 241f of the A.p.c. The scope of its application covers the person who, with the intention of obtaining a financial benefit for themselves or someone else or enabling themselves or someone else to counterfeit a non-cash legal tender (§ 241a of the A.p.c.), accepts, acquires, transports, transfers or otherwise possesses a foreign non-cash legal tender. The perpetrator of the crime is punished with the same penalty as in the case of fencing of domestic legal tender.

The third category includes the marketing of imitation money or its circulating surrogates. Within the distinguished class, attention should be paid to the type of § 233 sec. 1 item 1 of the A.p.c. It states that who intends to declare it authentic and unchanged, imports, exports, transports (except for the case included in § 232 sec. 2 of the A.p.c.), obtains from another person, acquires or takes possession of, trans-

[219] The fine is regulated in § 19 sec. 1–3 of the A.p.c. Fines are imposed in the amount of no less than two daily rates (sec. 1). The amount of one rate is determined taking into account the personal situation and earning opportunities of the perpetrator existing at the time of the judgment. The daily rate may not be lower than four Euros, nor may it exceed five thousand euros (sec. 2); see R. Lässig, [in:] F. Höpfel, E. Ratz (Hrsg.), *Wienner Kommentar zum Strafgesetzbuch*, Wien 1999, § 19 N1–N2, N8; E. Fabrizy, *Strafgesetzbuch, Kurzkommentar*, Wien 2010, § 19 N1–N3; O. Triffterer, *Österreichisches Strafrecht. Allgemeiner Teil*, Wien 1994, Kap. 19 N31–N46; W. Platzgummer, *Probleme der Geldstrafe*, „ÖJZ“ 1980, pp. 29–36; Ch. Mayerhofer, *Österreiches Strafrecht, Strafgesetzbuch*, Wien 2009, § 43 N 28ff; M. Eder-Rieder, *Das österreichische Strafrecht: Vorstellungen das Gesetzgebers und Verwirklichung in der Praxis*, „ZStW“ 1991, pp. 219–249; J. Sollberger, *Besondere Aspekte der Geldstrafe*, „ZStR“ 2003, pp. 244–263.

fers counterfeit or altered money, is liable to prosecution.[220] The implementation of elements of this type is subject to a penalty of up to five years of imprisonment. The same penalty threatens anyone who, claiming it to be real and unchanged, transfers counterfeit or altered money (§ 233 sec. 1 item 2 of the A.p.c.). The Austrian Penal Code also describes a modified type of circulation of imitation money (§ 233 sec. 2 of the A.p.c.). The aggravating element in this case is the commission of a crime against a currency with a nominal value exceeding three hundred thousand euros. The penalty for it is imprisonment from one year to ten years.

It should be mentioned about the specific type of marketing of imitation money, which is included in § 234 sec. 2 item 2 of the A.p.c. Its specificity results from the object of direct action, which is a bullion coin with a reduced value. A person who submits, as full-value ones, bullion coins of reduced value is liable to a penalty of imprisonment of up to three years. It should be noted that the nominal value of counterfeits placed on the market may determine the liability for the aggravated type. This subsumption is admissible – pursuant to § 234 section 2 item 2 sentence 3 of the A.p.c. – when the perpetrator commits an act in relation to reduced-value coins with a nominal value that exceeds a total of three hundred thousand euros. In this case, the penalty of imprisonment ranges from six months to five years.

The last group of crimes includes two *sui generis* forms of preparation. The first is the act of § 239 of the A.p.c. The scope of this provision covers the person who, with the intention of enabling themselves or someone else to commit an act under § 232, § 234, § 237 or § 238 of the A.p.c., manufactures, receives, acquires, transfers or otherwise acquires a means or tool that, due to its special nature, is expressly intended for this purpose, and in particular a hologram, another component of money or a specially protected security that serves to protect it against counterfeiting.[221] The commission of preparatory actions was penalized under the threat of imprisonment of up to two years. The second type of *quasi* pre-performance stage is included in § 241c of the A.p.c. Whoever, with the intention of enabling themselves or someone else to counterfeit a non-cash legal tender, manufactures, receives, acquires, transfers or otherwise acquires a means or tool that, due to its specific nature, is expressly intended for this purpose, is liable to prosecution. In the event of preparation for counterfeiting of non-cash legal tender, a sanction in the form of a custodial sentence for a period not exceeding one year or a fine of up to seven hundred and twenty daily rates is provided for.

It is impossible not to mention the circumstances that lead to abolishing the punishability of the perpetrator. We should comment on the active repentance clause

[220] D. Kienapfel, [in:] E. Foregger, F. Nowakowski (Hrsg.), *op. cit.*, § 232 N 38–40, § 233 N 13; E. Foregger, G. Kodek, E. Fabrizy, *op. cit.*, § 233 N IV.

[221] D. Kienapfel, [in:] E. Foregger, F. Nowakowski (Hrsg.), *op. cit.*, § 239 N 15; E. Foregger, G. Kodek, E. Fabrizy, *op. cit.*, § 239 N II; Ch. Bertel, K. Schwaighofer, *op. cit.*, § 239 N 3.

under § 240 sec. 1 items 1–3 of the A.p.c. The provision lists a catalogue of premises, the occurrence of which determines the immunity of an offender of the types from § 232–234 or § 237–239 of the A.p.c. The construction of the provision gives grounds to believe that it is sufficient to identify just one of them. It is unnecessary to investigate their cumulative fulfillment. In order not to be subject to a penalty, it is necessary to find a voluntary withdrawal from the prohibited act (§ 240 sec. 1 item 1 of the A.p.c.). Alternatively, the perpetrator may voluntarily destroy the counterfeit or altered money, a security or a reduced-value bullion coin or a device used to counterfeit it, and – if it is in their possession – transfer it to the competent authority (§ 240 sec. 1 item 2 of the A.p.c.).[222] The last possibility to benefit from immunity is the voluntary elimination – by reporting to the competent authority or otherwise – of the danger that as a result of the behaviour of the perpetrator or other persons involved in the crime, counterfeit or altered money, security, reduced-value bullion coin will be introduced into circulation as authentic, unaltered or full-value (§ 240 sec. 1 item 3 of the A.p.c.). The offender who voluntarily attempts to eliminate the danger resulting from the threats listed in § 240 sec. 1 of the A.p.c., which does not really exist or has been eliminated without their involvement, shall not be penalized (§ 240 sec. 2 of the A.p.c.). The second of the circumstances excluding the prosecution of the perpetrator which is regulated in § 241d sec. 1 of the A.p.c. is applicable to acts typified in § 241a–241c of the A.p.c. Pursuant to this provision, there is no penalty for those who voluntarily destroy or otherwise repeal the danger of using a counterfeit non-cash legal tender or a tool to produce such a counterfeit before the means or tool is used in legal transactions. As in the case of § 240 sec. 2 of the A.p.c., there is a circumstance foreseen excluding the punishment of the offender in relation to the imitation of non-cash legal tender (§ 241d sec. 2 of the A.p.c.). Under that provision, an offender who, being in error as to the existence of a threat of the use of a counterfeit in legal transactions, voluntarily tries to eliminate the danger is not liable to a penalty. A similar consequence in the form of immunity from prosecution is provided if the danger has been eliminated without the intervention of the perpetrator.

C. Swiss Confederation (Penal Code of Switzerland of 21 December 1937)[223]

Relevant provisions that characterize acts that affect the trading of money, securities and other means on the basis of the Swiss legal order should be sought in Book

[222] A competent authority should be understood as a body set up to prosecute criminal offences. Public security bodies appointed for criminal prosecution should be considered equivalent (§ 151 sec. 3 of the A.p.c.).

[223] Schweizerisches Strafgesetzbuch vom 21. Dezember 1937 (source: https://lawbrary.ch/browser/StGB/311_01/?plang=de [access: 1.12.2022]), hereinafter referred to as Sw.p.c.

Two – "Special Provisions", Tenth Title – "Counterfeiting of money, official seals, official marks, weights and measures".

Offences that interfere with the authenticity or circulation of a currency and its surrogates can be grouped into four categories. The first is counterfeiting (Art. 240 sec. 1 of the Sw.p.c.) or altering (Art. 241 sec. 1 of the Sw.p.c.) of money and behaviour consisting in the reproduction of circulating money (Art. 243 sec. 1 sentences 1 and 2 of the Sw.p.c.). The second category includes the release of a counterfeit into circulation (Art. 242 sec. 1 of the Sw.p.c.) and the type of circulation of reproduction (Art. 243 sec. 1 sentence 3 *in fine* of the Sw.p.c.). As part of the third one, it is necessary to indicate the fencing of imitations of money (Art. 244 sec. 1 of the Sw.p.c.), as well as the specific type of fencing of reproductions (Art. 243 sec. 1 sentence 3 *in principio* of the Sw.p.c.). The last category is the preparation for currency falsification (Art. 247 sections 1 and 2 of the Sw.p.c.).[224]

The first class is opened by the act described in Art. 240 sec. 1 of the Sw.p.c. On the basis of that provision, criminal liability shall be imposed on any person who, in order to be marketed as authentic,[225] counterfeits[226] metal money, paper

[224] M. Błotnicki, *Falschgeld und sein Surogat im Schweizer Strafrecht*, „SIL" 2023, vol. 2, pp. 73–87.

[225] In order to be held criminally liable for counterfeiting money, it is necessary to demonstrate, on the one hand, intentionality and, on the other, the intent to market counterfeit money as authentic, see C.L. Meili, S. Keller, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *Basler Kommentar, Strafrecht II Art. 111–392*, Basel 2013, p. 1727. The intent must concern all objective elements of the offence, including the quality of the imitation produced, see S.B. Kim, *Gelddelikte im Strafrecht, Dissertation*, Zürich 1991, p. 74; A. Donatsch, W. Wohlers, *Strafrecht IV, Delikte gegen die Allgemeinheit*, Zürich 2011, p. 112; M.A. Niggli, *Kommentar zum schweizerischen Strafrecht, Fälschung von Geld, amtlichen Wertzeichen, amtliche Zeichen, Mass und Gewicht, Art. 240–250 sowie Art. 237 und 328 StGB*, Bern 2000, N 33–34; S. Trechsel et al., *Schweizerisches Strafgesetzbuch*, Zürich 2008, Art. 240 N 5; C.L. Meili, S. Keller, *op. cit.*; BGE 82 IV 198, 202 f. A conditional intent is considered sufficient. In order to attribute the act, it is not necessary to examine the intent to mislead or cause damage, see E. Hafter, *Schweizerisches Strafrecht, Besonderer Teil*, Berlin 1943, p. 573; M.A. Niggli, *op. cit.*, Art. 240 N33; S.B. Kim, *op. cit.*; C.L. Meili, S. Keller, *op. cit.*; BGE 80 IV 265; BGE 82 IV 202; BGE 119 IV 154, 158. It is indicated that the perpetrator is at least to accept that counterfeits are circulated or used by someone as authentic, see S.B. Kim, *op. cit.*, p. 75; A. Donatsch, W. Wohlers, *op. cit.*; Urteil WSG BE vom 23.6.2000 unpubl. The intention to put into circulation must already exist at the time the counterfeit was created, see G. Stratenwerth, F. Bommer, *Schweizerisches Strafrecht, Besonderer Teil II, Straftaten gegen Gemeininteressen*, Bern 2008, § 33 N 8; G. Stratenwerth, W. Wohlers, *Schweizerisches Strafgesetzbuch. Handkommentar*, Bern 2013, p. 477; M.A. Niggli, *op. cit.*, Art. 240 N 38–39; S.B. Kim, *op. cit.*, p. 75.

[226] Implementation of the causative action of Art. 240 of the Sw.p.c. consists in counterfeiting the object of the executive action. It is indicated that it is about creating a monetary token that gives the impression of being authentic and valid. Thus, the quality of the created counterfeit is important. The prevailing position is that there should not be too high requirements in this respect, due to the lack of a universal obligation to verify the authenticity of money in everyday

money[227] or banknotes.[228] In the case of implementation of elements of type, the per-

transactions, see M.A. Niggli, *op. cit.*, Art. 240 N 16; S.B. Kim, *op. cit.*, p. 72; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 5; A. Donatsch, W. Wohlers, *op. cit.*, p. 111; Urteil StrafGer BL vom 27.8.2001 unpubl. For the commission of a crime, the persuasiveness of the counterfeit must be taken into account from the point of view of the likelihood of confusing it with an authentic value. It is necessary to subjectify this assessment. The imitation must be sufficiently similar to the original to mislead the average unsuspecting person, see S.B. Kim, *op. cit.*, pp. 72–73; S. Trechsel et al., *op. cit.*, Art. 240 N 4; M.A. Niggli, *op. cit.*, Art. 240 N 17; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 5; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 477; BGE 123 IV 38 1. *A contrario* imitation, the lack of authenticity of which is found at first glance, excludes the attribution of an offence under Art. 240 sec. 1 of the A.p.c. in the form of commission, see S.B. Kim, *op. cit.*, p. 72; M.A. Niggli, *op. cit.*, Art. 240 N 17; C.L. Meili, S. Keller, *op. cit.*, p. 1726; cf BGE 119 IV 154, where the Federal Supreme Court expressed the view that the creation of even an easily recognizable imitation of money constitutes a commission and fulfills the elements of the type. Niggli disagreed with this view. He justifies it by the argument that, from an objective point of view, in such a situation, there can be no likelihood/danger of confusion as to the authenticity of the counterfeit. According to this author, the attempt to commit an offence under Art. 240 sec. 1 of the Sw.p.c. should be attributed in this case, see M.A. Niggli, *op. cit.*, Art. 240 N 18.

227 Money should be understood as any legal tender issued by the state (or an authority authorized by it), at the legal exchange rate, see E. Albisetti (Hrsg.), *Handbuch des Geld-, Bank- und Börsenwesens der Schweiz*, Thun 1999, pp. 311–333; E. Hafter, *op. cit*, pp. 572; A. Donatsch, W. Wohlers, *op. cit.*, p. 109; S. Trechsel et al., *op. cit.*, Art. 240 N 2. This makes it possible to distinguish between money in the strict sense, including only legal tender with an exchange rate and an obligation to accept, and the *largo* sense, which includes other legal tenders, see S.B. Kim, *op. cit.*, p. 9 et seq.; M.A. Niggli, *op. cit.*, Art. 240 N 49; C.L. Meili, S. Keller, *op. cit.* pp. 1720–1721. Metal money, paper money and banknotes, which constitute legal tender, are relevant, i.e. they are used to redeem monetary debt with the effect of releasing the obligation of debtor, see B. Neidhart, *Schweizerisches Strafgesetzbuch*, Zürich 1975, p. 201; M.A. Niggli, *op. cit.*, Art. 240 N 25; BGE 76 IV 164; BGE 78 I 225; BGE 82 IV 201; BGE 83 IV 193. Bank money, cheques and bills of exchange do not fall within the scope of criminal law protection of the type of prohibited act in question, see C.L. Meili, S. Keller, *op. cit.* p. 1720. Speaking of metal money, it is worth clarifying that it also covers commemorative and investment coins. This is justified by the fact that they are a legal tender and until they are withdrawn from circulation, all authorities have a limited obligation to accept them, see M.A. Niggli, *op. cit.*, Art. 240 N 91–97.

228 Pursuant to Art. 250 of the Sw.p.c., the provisions of Tenth Title also apply to metal money, paper money and banknotes of foreign countries. As a rule, money issued in another country is subject to the same protection, see G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 4; S. Trechsel et al., *op. cit.*, Art. 240 N 3; C.L. Meili, S. Keller, *op. cit.* p. 1720; M.A. Niggli, *op. cit.*, Art. 240 N 43. In case of doubt, Swiss law should be applied. Differences arising from the application of foreign law should be taken into account. The obligation to accept foreign money in the Confederation is considered important, see C.L. Meili, S. Keller, *op. cit.* p. 1800; and the regulations regarding the creation and withdrawal of money from circulation, see M.A. Niggli, *op. cit.*, Art. 240 N 14–17. In the case of a foreign currency, the question of the level of its imitation arises. When judging each case *in concreto*, the degree of recognizability of a counterfeit of such a currency should be taken into account, see S.B. Kim, *op. cit.*, p. 73.

petrator is liable to a prison sentence of not less than a year.[229] In addition, liability for the mitigated form of money counterfeiting is provided for, classified as a particularly minor accident (Art. 240 sec. 2 of the Sw.p.c.).[230] Under that provision, a penalty of up to three years' imprisonment or a fine is provided for a particularly minor case.[231]

[229] The penalty of imprisonment is regulated in Art. 40 sections 1 and 2 of the Sw.p.c. It specifies the lower and upper limits of the statutory penalty. The term of imprisonment shall be no less than three days and no more than twenty years. The admissibility of a judgment on a substitute custodial sentence in the event of failure to pay a fine or a pecuniary penalty is reserved. In clearly indicated cases, a life imprisonment sentence can also be adjudged, see A. Wąsek, *Kierunki zmian szwajcarskiego prawa karnego*, „Annales UMCS, sec. G." 1977, vol. XXIV(7), pp. 125–127; H. Schultz, *Einführung in den Allgemeinen Teil des Strafrechts, Die kriminalrechtliche Sanktion, Das Jugendstrafrecht*, Bern 1982, p. 66; B.F. Brägger, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *Basler Kommentar*, Strafrecht I Art. 1–110, Basel 2013, pp. 767–770; S. Trechsel et al., *op. cit.*, Art. 35 N 1; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 91; B. Neidhart, *op. cit.*, pp. 40–41; BGE 86 IV 237; BGE 106 IV 321, 324.

[230] There are no uniform criteria for classifying an act as a mitigated form of money counterfeiting. Various circumstances support the assumption of a particularly minor accident, see E. Hafter, *op. cit.*, p. 575; A. Donatsch, W. Wohlers, *op. cit.*, p. 113; M.A. Niggli, *op. cit.*, Art. 240 N 49. Observations resulting from case-law may be helpful, although it is difficult to find consistency of positions here. One can read the postulate of restraint and competence in adopting the modified type in the judicature, see BGE 119 IV 154. The circumstances in favour of this form are: ease in recognizing the imitation, poor quality of the counterfeit, ineptness in counterfeiting, or a small number of counterfeits with a low nominal value, see BGE 133 IV 256; BGE 119 IV 154. The diversity of views can be observed in the case of number and value of counterfeits. The mitigated form was adopted in the case of counterfeiting: of eight two-franc banknotes; thirty-one hundred-franc banknotes, of which twenty-eight were put into circulation; ten fifty-franc banknotes or thirteen hundred-franc banknotes. In turn, in the following cases of counterfeiting, classifying them as a particularly minor case was refused: fifty hundred-franc banknotes and twenty two hundred-franc banknotes; thirty hundred-franc banknotes and twenty two hundred-franc banknotes, see review of the case-law in S.B. Kim, *op. cit.*, p. 75; C.L. Meili, S. Keller, *op. cit.*, pp. 1728–1729.

[231] The institution of fine is regulated in Art. 34 sec. 1–4 of the Sw.p.c. Unless otherwise provided for in a specific provision, a fine of between three and one hundred and eighty daily rates is imposed. The court determines the number of rates depending on the degree of guilt of the perpetrator (sec. 1 and sec. 4), see Ch. Schwarzenegger, M. Hug, D. Jositsch, *Strafrecht II, Strafen und Massnahmen*, Zürich 2007, p. 129; G. Stratenwerth, *Schweizerisches Strafrecht, Allgemeiner Teil II*, Bern 2006, § 2 N 6–9; S. Cimichella, *Die Geldstrafe im Schweizer Strafrecht, unter Berücksichtigung der Problematik zum bedingten Vollzug*, Zürich 2006, p. 36 et seq.; F. Bänziger A. Gubschmid, J. Sollberger, *Zur Revision des Allgemeinen Teils des Schweizerischen Strafrechts und zum neuen materiellen Jugendstrafrecht*, Bern 2006, p. 40 et seq.; R. Binggeli, *Die Geldstrafe*, „Anwaltsrevue" 2001, Nr. 1, pp. 10–13; M. Killias, *Eine unlösbare Aufgabe: die korrekte Bemessung der Geldstrafe im Gerichtssaal*, [in:] B. Tag, M. Hauri (Hrsg.), *Die Revision des Strafgesetzbuches Allgemeiner Teil*, Zürich – St. Gallen 2006, pp. 105–109; F. Riklin, *Neue Sanktionen und ihre Stellung im Sanktionensystem*, [in:] S. Bauhofer, P.-H. Bolle (Hrsg.), *Reform der strafrechtlichen Sanktionen*,Chur – Zürich 1994, pp. 143–182; V. Maire, *La peine pécuniaire selon le CP 2002*, [in:] A. Kuhn, L. Moreillon, B. Viredaz, A. Willi-Jayet (éd.), *Droit des sanctions*, Bern 2004, pp. 67–69; A. Kuhn, *La peine pécuniaire*, „ZStrR" 1997, pp. 147–159; A. Dolge, [in:]

The next provision concerning prosecution for the creation of imitation money is Art. 240 sec. 3 of the Sw.p.c. It regulates the liability for money counterfeiting committed abroad. This institution recalls the Polish solutions to the principle of substitute liability (Art. 110 § 2 of the p.c.) and the rule of double punishability (Art. 111 § 1 of the p.c.). On the basis of this provision, an offender will be prosecuted who, having committed the crime under consideration abroad and without being subject to extradition, enters the Confederation.[232] A condition of double criminality is required, i.e. criminalization of the assessed behaviour also at the place of commitment of its constituent elements.

Next, the analysis should be directed to the type of currency altering under Art. 241 sec. 1 of the Sw.p.c.[233] According to that provision, a person who, in order to be marketed at a higher value,[234] converts metal money, paper money or

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M.A. Niggli, H. Wiprächtiger (Hrsg.), *Basler Kommentar, Strafrecht I Art. 1-110*, Basel 2013, pp. 690–701; idem, *Geldstrafen als Ersatz für kurze Freiheitsstrafen – Top oder Flop*, „ZStrR" 2010, pp. 58–61; G. Stratenwerth, W. Wohlers, *op. cit.*, pp. 80–83; S. Trechsel et al., *op. cit.*, Art. 34 N 9–16; J. Sollberger, *Besondere…*, *op. cit.*, pp. 250–252; BGE 86 II 76; BGE 115 II 75; BGE 114 IV 84; BGE 134 IV 65. The daily rate shall not be less than thirty francs and shall not exceed three thousand francs. In exceptional cases, where the personal and property conditions of the perpetrator justify it, the daily rate of the fine may be reduced to ten francs. When determining the amount of the daily rate, account should be taken of the perpetrator's income and assets, maintenance costs, family relationships and maintenance obligations existing at the time of the judgment (sec. 2), see P. Albrecht, *Anmerkungen zur Diskussion über einen Mindestbetrag des Tagessatzes bei der Geldstrafe gemäss Art. 34 Abs. 2 StGB*, „ZStrR" 2008, pp. 292–297; 45–57; G. Grebing, *Probleme…*, *op. cit.*, pp. 1049–1085; idem, *Geldstrafenverhängung nach dem Tagessatzsystem im deutschen Recht*, „ZStrR" 1981, pp. 45–68; H. Wiprächtiger, *Die Sanktionen des Allgemeinen Teils des Strafgesetzbuches – taugliche Instrumente?*, „ZStR" 2008, pp. 364–377; A. Dolge, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *op. cit.*, pp. 702–723; idem, *Geldstrafen…*, *op. cit.*, p. 63; S. Cimichella, *Die Problematik der bedingten Geldstrafe, Jusletter vom 30.1.2006*, N 1; idem, *Die Geldstrafe…*, *op. cit.*, p. 85 et seq.; J. Sollberger, *Besondere…*, *op. cit.*, p. 255; F. Bänziger et al., *op. cit.*, pp. 41–45; G. Stratenwerth, *op. cit.*, § 2 N 8–14; G. Stratenwerth, W. Wohlers, *op. cit.*, pp. 81–83; R. Binggeli, *op. cit.*, p. 11; BGE 116 IV 4; BGE 134 IV 60; BGE 135 IV 180.

[232] The prevailing view is that Art. 240 sec. 3 of the Sw.p.c. creates the possibility of a substitute administration of justice in criminal matters, which depends on the ineffective extradition application of a foreign state, see G. Stratenwerth, *Schweizerisches Strafrecht, Allgemeiner Teil I, Die Straftat*, Bern 2011, pp. 111–113; S.B. Kim, *op. cit.*, p. 58; M.A. Niggli, *op. cit.*, Art. 240 N 56. It must be held that the exercise of jurisdiction in respect of an act committed abroad is open when prosecution by another State is not actually or legally permissible. The authors point out that the provision reflects a subsidiary law enforcement directive, which is activated when the perpetrator cannot be extradited, see M.A. Niggli, *op. cit.*, Art. 240 N 58–59; S.B. Kim, *op. cit.*, p. 55 et seq.; C.L. Meili, S. Keller, *op. cit.*, pp. 1729–1730.

[233] M. Błotnicki, *Falschgeld…*, *op. cit.*, pp. 79–80.

[234] It is necessary to indicate the requirement to identify two links in the structure of the offence. The first is the intent, which must apply to all objective elements of the offence, including the quality of the counterfeit produced, see S.B. Kim, *op. cit.*, p. 80; BGE 82 IV 198, 202; The other is the objective of marketing altered money with higher value. The higher value is to apply to the

banknotes,[235] is liable to prosecution.[236] The execution of the elements of this act was punishable by a sanction ranging from six months to five years' imprisonment. It is worth noting that from the point of view of the intensity of penalization, altering authentic money tokens is punished more leniently than counterfeiting money. This translates into the conclusion that the currency altering is characterized by a lower degree of social harm than the act typified in Art. 240 sec. 1 of the Sw.p.c.[237] In addition, it also lists liability for the mitigated form (Art. 241 sec. 2 of the Sw.p.c.). Pursuant to that provision, in particularly minor cases of currency altering, the perpetrator is to be punished with a maximum of three years' imprisonment or a fine.[238]

Then, we will interpret the prohibited acts under Art. 243 sec. 1 sentences 1 and 2 of the Sw.p.c. They do not rely strictly on the counterfeiting of money, because of the appropriate distinction. Their discussion is necessary because they complement the legal and criminal protection of money, rendering it complete.[239] To a certain extent, they protect the security of payment transactions and the trust in Swiss monetary tokens.[240] On the basis of Art. 243 sec. 1 sentence 1 of the Sw.p.c., anyone who, without the intention of counterfeiting,[241] reproduces or imitates

nominal value of the created imitations. This excludes the attribution of responsibility when the perpetrator has only consciously and willingly pursued the collectible value of the counterfeit, see C.L. Meili, S. Keller, *op. cit.* 1733; M.A. Niggli, *op. cit.*, Art. 241 N 17–21; S.B. Kim, *op. cit.*, p. 79; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 478; B. Neidhart, *op. cit.*, p. 201.

235 The perpetrative act can only concern a situation where the subject of the offence uses authentic money. Elements such as the altering of a counterfeit item fail to fall within its scope, see E. Hafter, *op. cit.*, p. 577; M.A. Niggli, *op. cit.*, Art. 241 N 13; S.B. Kim, *op. cit.*, p. 79. It is therefore about any change in a valid currency that gives it the appearance of a higher nominal value. In this context, the way the perpetrator achieves the intended effect is insignificant, see S.B. Kim, *op. cit.*, pp. 78–79; M.A. Niggli, *op. cit.*, Art. 241 N 14; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 13; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 478; B. Neidhart, *op. cit.*, p. 201.

236 M. Błotnicki, *Falschgeld…*, *op. cit.*, pp. 75–78.

237 As part of the *de lege lata* observations, such a state of affairs results from the limits of the statutory penalty for both offences. As part of the *de lege ferenda* postulates, it is argued that understanding the reasons for introducing such a differentiation between types is destined to fail. Doubts arise, in particular, when a counterfeiter engages significant forces and means to create the appearance of a higher nominal value imitation of a relatively high-quality, which is *a priori* more mildly punished than the production of medium-quality counterfeits of low nominal value. In such factual situations, there should be no differences from the perspective of the statutory penalty. Differentiation may take place on the basis of the judicial penalty, see M.A. Niggli, *op. cit.*, Art. 241 N 6–14; E. Hafter, *op. cit.*, p. 557; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 13; S.B. Kim, *op. cit.*, p. 78.

238 M. Błotnicki, *Falschgeld…*, *op. cit.*, p. 80.

239 *Ibidem*, pp. 81–83.

240 M.A. Niggli, G. Fiolka, *Geld, Gold und die Kunst der Gesetzgebung*, „ZStrR" 2001, pp. 257–272; M.A. Niggli, *op. cit.*, Art. 327 N 6.

241 The type of offence described in Art. 243 sec. 1 sentence 1 of the Sw.p.c. applies when the offender performs the behaviour without the intention of falsifying the monetary token. This does

banknotes[242] in such a way as to create a risk of confusion with authentic banknotes by persons or devices, in particular when all, part or most of the banknote is reproduced or imitated on material and in a size that corresponds to or is similar to the original,[243] is liable to prosecution. In the case of the execution of the elements, there is a threat of imprisonment for a period not exceeding three years or a financial penalty.[244] Then

not preclude attribution of conduct committed intentionally, even on a conditional basis to the perpetrator. The literature indicates that the *Subjektive Tatbestandelemente* must refer both to the reproduction or imitation of the banknote and to the risk of misleading another person as to its authenticity, see C.L. Meili, S. Keller, *op. cit*. p. 1754; G. Stratenwerth, W. Wohlers, *op. cit*., p. 480.

242 Due to significant differences between Art. 243 sec. 1 sentence 1 of the Sw.p.c., and Art. 240 sec. 1 of the Sw.p.c., it is necessary to define what constitutes prohibited behaviour within the type subject to our analysis. It is argued that reproduction is reduced to any activity by which an imitation faithful to the original is created, which may differ in size or colour. On the other hand, imitation refers to the production of counterfeits that only resemble the original, but differ from the original in text content, font or image. This is most often the case with advertising materials or prints with the appearance of money, see C.L. Meili, S. Keller, *op. cit*. p. 1754; G. Stratenwerth, W. Wohlers, *op. cit*., p. 480.

243 The danger of misleading as to authenticity must be interpreted broadly. The criteria to be taken into account are: the level of imitation, which is assessed in relation to its compliance with the authentic monetary token and its compatibility in terms of the material, design and dimensions used by the perpetrator. In order for a monetary token to have the effect of being able to mislead as to its authenticity, these criteria must be cumulatively fulfilled, see M. Raggenbass, *Strafrechtlicher Schutz von Banknoten*, „SJZ" 1996, pp. 57–60; M.A. Niggli, *op. cit*., Art. 327 N 23. The electronic reproduction of the banknote image on a website is not subject to criminal liability under this provision. The conclusion is the same in the case of creating a particularly small or large imitation of a banknote (or one in which the proportions of the image are distorted). In terms of dimensional compatibility, reference should be made to good practices developed by the Swiss National Bank. The reproduction or imitation of banknotes was allowed if their dimensions were extended or shortened by at least half, see S. Trechsel et al., *op. cit*., Art. 243 N 4; M.A. Niggli, *op. cit*., Art. 327 N 21–24; cf. M. Raggenbass, *op. cit*., p. 59. The colour of the monetary token was not considered as a criterion for assessing the risk of misrepresentation as to the authenticity of the banknote, see C.L. Meili, S. Keller, *op. cit*. p. 1753.

244 A financial penalty (*der Busse*) is a different kind of criminal law response to a disclosed offence than a fine (*die Geldstrafe*). This institution is defined in Art. 106 sec. 1–5 of the Sw.p.c. Unless a special provision provides otherwise, the amount of the fine may not exceed ten thousand francs (sec. 1), see S. Heimgartner, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *Basler Kommentar, Strafrecht I Art.1-110*, Basel 2013, pp. 2069–2070; C. Stooss, *Zur Reform der Geldstrafe*, „ZStrR" 1917, p. 87; J. Hurtado Pozo, L'amende, „ZStrR" 1985, p. 72; A. Kuhn, *op. cit*., p. 150; G. Stratenwerth, W. Wohlers, *op. cit*., p. 245; G. Stratenwerth, *op. cit*., Teil II, p. § 2 N 29; S. Trechsel et al., *op. cit*., Art. 106 N 1. It is worth mentioning the general directive on financial penalty. The court decides on a financial penalty according to the circumstances of a given case and in proportion to the degree of guilt of the perpetrator (Art. 106 sec. 3 of the Sw.p.c.), see S. Fahrni, S. Heimgartner, *Strafrechtliche und verwaltungsrechtliche Sanktionen bei Geschwindigkeitsübertretungen nach neuen Recht*, „Anwaltsrevue" 2007, vol. 1, pp. 7–11; M. Waiblinger, *Die strafrechtliche Rechtsprechung des Bundesgerichts im Jahre 1952*, „ZBJV" 1952, p. 198; T. Maurer, *Die Busse*, „ZStrR" 1985, pp. 15–72; M. Heimgartner, *op. cit*., pp. 2073–2080; S. Trechsel et al., *op. cit*., Art. 49 N 10; G. Stratenwerth,

the subject of our considerations should be Art. 243 sec. 1 sentence 2 of the Sw.p.c. The scope of the provision covers anyone who, without the intention of counterfeiting, manufactures items which, in terms of technique of minting, weight, size, denomination or other features of an official coin, are similar to monetary tokens (coins), thereby creating a risk of confusion with and taking for circulation money.[245] This provision complements the criminal law protection of money turnover against the creation of imitations, which was initiated in Art. 243 sec. 1 sentence 1 of the Sw.p.c. The commission of the act was penalized with imprisonment not exceeding three years or a fine. Liability for the unintentional type of acts is provided *in gremio* in Art. 243 sec. 1 of the Sw.p.c. Pursuant to this provision, if the perpetrator acts negligently,[246] they are subject to a financial penalty (Art. 243 sec. 2 of the Sw.p.c.).[247]

W. Wohlers, *op. cit*., p. 245; G. Stratenwerth, *op. cit*., Teil I, p. § 2 N 31; J. Sollberger, *Besondere…*, *op. cit*., p. 262; BGE 119 IV 330; BGE 116 IV 4; BGE 101 IV 16; BGE 92 IV 4; BGE 90 IV 149.

245 As in the case of reproduction and imitation of banknotes (Art. 243 sec. 1 sentence 1 of the Sw.p.c.), there is provision for responsibility for the creation of objects that may create the appearance of coins in circulation. Similarly, the criteria providing for the possibility of confusing the manufactured item with a monetary mark were defined. There are also indications of doubts related to their practical application, see M.A. Niggli, G. Fiolka, *op. cit*., p. 276.

246 It is necessary to define the unintentional implementation of elements of this type. On the basis of Art. 12 sec. 3 of the Sw.p.c., we face negligence (*Fahrlässigkeit*) when the perpetrator commits a crime or offense after failing to consider the consequences of their actions or failing to take them into account, see J. Hurtado Pozo, *Droit pénal, Partie générale*, Zürich 2008, N 1366–1394; A. Donatsch, B. Tag, *Strafrecht I, Verbrechenslehre*, Zürich 2006, p. 246 et seq.; S. Trechsel, P. Noll, *Schweizerisches Strafrecht, Allgemeiner Teil I, Allgemeine Voraussetzungen der Strafbarkeit*, Zürich 2004, p. 247 et seq.; K. Seelmann, *Strafrecht, Allgemeiner Teil*, Basel 2012, p. 162 et seq.; M.A. Niggli, S. Maeder, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *Basler Kommentar, Strafrecht I Art. 1-110*, Basel 2013, pp. 271–303; G. Stratenwerth, W. Wohlers, *op. cit*., pp. 26–27; F. Riklin, *Schweizerisches Strafrecht, Allgemeiner Teil I, Verbrechenslehre*, Zürich 2007, § 16 N 36; P. Graven, *L'infraction pénale punissable*, Bern 1995, p. 227; S. Flachsmann, *Fahrlässigkeit und Unterlassung*, Zürich 1992, p. 113 et seq.; M. Rutz, *Der objektive Tatbestand des Fahrlässigkeitsdelikts*, „ZStrR" 1973, pp. 358–378; H. Walder, *Probleme bei Fahrlässigkeitsdelikten*, „ZBJV" 1968, pp. 161–170; G. Stratenwerth, *op. cit*., Teil I, § 16–17; BGE 115 IV 199; BGE 121 IV 10; BGE 122 IV 145; BGE 129 IV 119; BGE 117 IV 130; BGE 83 IV 84; BGE 97 IV 161; BGE 89 IV 103. Imprudence is a breach of duty when the perpetrator fails to exercise due diligence, to which they are obliged in the circumstances according to their individual capabilities, see D. Häring, *Die Mittäterschaft beim Fahrlässigkeitsdelikt*, „BS", 2005, p. 192 et seq.; C. Riedo, M. Chvojka, *Fahrlässigkeit, Mittäterschaft und Unsorgfaltsgemeinschaft*, „ZStrR" 2002, pp. 152–168; J. Hurtado Pozo, *Droit…*, *op. cit*., N 1369; A. Donatsch, B. Tag, *op. cit*., p. 327 et seq.; F. Riklin, *Schweizerisches…*, *op. cit*., § 13 N 44; K. Seelmann, *op. cit*., p. 44 et seq.; G. Stratenwerth, *op. cit*., Teil I, § 9 N N9 et seq.; G. Stratenwerth, W. Wohlers, *op. cit*., pp. 26–28; S. Trechsel, P. Noll, *op. cit*., p. 139; S. Trechsel et al., *op. cit*., Art. 12 N 32 et seq.; BGE 69 IV 228; BGE 80 IV 130; BGE 90 IV 8; BGE 99 IV 63; BGE 116 IV 306; BGE 117 IV 58; BGE 118 IV 130; BGE 127 IV 62; BGE 134 IV 193.

247 Justification for criminalizing the unintentional reproduction, imitation or creation of a monetary token should be provided. The extension of the scope of criminal liability to negli-

The second category includes marketing a counterfeit (Art. 242 sec. 1 of the Sw.p.c.). Under that provision, criminal liability is imposed on anyone who places counterfeit or altered metal money, paper money or banknotes on the market[248] as authentic or unaltered.[249] The commission of the act was punishable by a penalty of imprisonment not exceeding three years or a fine. What is interesting is the mitigated form of circulating counterfeits under Art. 242 sec. 2 of the Sw.p.c. The construction of its elements resembles the Polish solution under Art. 312 of the p.c. Based on the said provision the offender, his principal or representative who accepted the counterfeit or converted money as authentic or unchanged is subject to

gent conduct is motivated by evidentiary difficulties in demonstrating the intent to counterfeit a monetary token, in particular with regard to the production of counterfeits for the purposes of games or theatrical performances, see C.L. Meili, S. Keller, *op. cit*. p. 1754. What is also stressed is the preventive effect of the criminal prohibition, see M.A. Niggli, G. Fiolka, *op. cit*., p. 261; M.A. Niggli, *op. cit*., Art. 327 N 35. Anyone who fails to examine – and consequently fails to exercise due diligence as to the level of imitation from the point of view of the possibility of misrepresentation as to its authenticity – will be liable to penalty.

[248] It is appropriate to draw the distinction between putting counterfeits into circulation, which can be found under the legislation of Germany and Austria, and the marketing, which is characteristic of the Swiss criminal law. The prevailing position is that the character of the causative action has a broader objective scope, which excludes their synonymous treatment, see M.A. Niggli, *op. cit*., Art. 242 N 13–14; C.L. Meili, S. Keller, *op. cit*. pp. 1739–1740. It also includes preparatory activities preceding the distribution of counterfeit in trade. The offence is to market the imitation, i.e. to transfer the counterfeit money as a legal tender (or for other purposes) to a third party. The transfer should be understood as any behaviour that involves the loss of possession or the right to dispose of the imitation for the benefit of another person. This may include, for example, payment of a price, transfer, exchange, donation or payment of a deposit, see M.A. Niggli, *op. cit*., Art. 242 N 13–19; E. Hafter, *op. cit*, p. 578; G. Stratenwerth, F. Bommer, *op. cit*., § 33 N 18–19.

[249] The object of the executive action is counterfeiting of a monetary token, which is put into circulation as authentic and unaltered. Such a clear statement generates serious interpretative implications on the basis of the type. This means that another person – the recipient of the counterfeit – must act in good faith and accept the imitation as a legal monetary token. The commission of an offence under Art. 242 sec. 1 of the Sw.p.c. is excluded, when the money was transferred to a cooperating criminal, see S.B. Kim, *op. cit*., pp. 81–82; M.A. Niggli, *op. cit*., Art. 242 N 20. This is the dominant view, but not the sole one. One of the decisions (BGE 76 IV 162, 165) presented the position that from the viewpoint of criminal liability it does not matter whether the perpetrator independently put the counterfeit on the market or commissioned it to another person acting in bad faith, i.e. being aware of the lack of authenticity of the monetary token. This concept has been criticized in the doctrine of law, see S. Trechsel et al., *op. cit*., Art. 242 N 2; S.B. Kim, *op. cit*., pp. 82–84; M.A. Niggli, *op. cit*., Art. 242 N 23; which led to a change in the assessment by the Federal Supreme Court (BGE 85 IV 22; BGE 123 IV 9). It was pointed out that the transfer of a counterfeit to a person who is aware of the use of imitation, in order for the counterfeit to reach a person acting in good faith, fails in the perspective of the results of the application of the language directive and excludes criminal liability for the analyzed act, see G. Stratenwerth, W. Wohlers, *op. cit*., pp. 478–479; C.L. Meili, S. Keller, *op. cit*. pp. 1740–1741.

criminal prosecution.[250] In this case, there is the threat of up to three years' imprisonment or a fine. The last offense of the second category is the behaviour under Art. 243 sec. 1 sentence 3 *in fine* of the Sw.p.c.). This provision regulates an issue that is specific due to the object of the executive action of the prohibited act. Pursuant to the above provision, the marketing of reproductions or imitations of a banknote or an object resembling a circulation coin has been criminalised.[251] Committing this offence involves the threat of imprisonment for up to three years or a fine.

The third category is behaviour that boils down to fencing of currency imitation. The criminalisation covers the import,[252] acquisition[253] or storage[254] of counterfeit or altered metal money, paper money or banknote for the purpose of putting them into circulation as authentic or unaltered (Art. 244 sec. 1 of the Sw.p.c.). The implementation of the constituent elements of this type was subjected to a penalty of imprisonment of no more than three years or a fine. In addition, responsibility for the aggravated type is provided for. In accordance with Art. 244 sec. 2 of the Sw.p.c., whoever, in order to put into circulation as authentic and unchanged, imports, purchases or stores large quantities of counterfeit or altered metal money, paper money or banknote, is liable to prosecution.[255] The more severe penalty is a penalty of between one and five years

[250] The subjective scope of Art. 242 sec. 2 of the Sw.p.c. covers a special category of perpetrators. It includes those who have accepted the imitation of a money token in good faith. The argument for a more lenient penalty is that the perpetrator is motivated by the desire to avoid the loss caused by obtaining an imitation of money, rather than by misleading another person, see G. Stratenwerth, W. Wohlers, *op. cit.*, p. 479; C.L. Meili, S. Keller, *op. cit.* p. 1743; A. Donatsch, W. Wohlers, *op. cit.* 117; E. Hafter, *op. cit*, p. 580; M.A. Niggli, *op. cit.*, Art. 242 N 39.

[251] M.A. Niggli, *op. cit.*, Art. 327 N 27–29; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 480; C.L. Meili, S. Keller, *op. cit.* p. 1754.

[252] Import shall be understood as import of counterfeit currency into the territory of the Swiss Confederation from abroad. The element of the causative action should be interpreted in the same way as in the case of pornography imports. Significant differences exist in the perspective of the *Subjektive Tatbestandselemente*, see S.B. Kim, *op. cit.*, p. 92; M.A. Niggli, *op. cit.*, Art. 244 N 12; BGE 124 IV 106.

[253] The acquisition constitutes the most controversial feature of the *Objektive Tatbestandselemente* type pursuant to Art. 244 sec. 1 of the Sw.p.c. According to the dominant view, an acquisition occurs when the perpetrator obtains an independent claim to imitation of money, i.e. includes it actually, economically or under any legal title in their property, see A. Donatsch, W. Wohlers, *op. cit.* p. 122; S.B. Kim, *op. cit.*, p. 93; M.A. Niggli, *op. cit.*, Art. 244 N 13; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 37; S. Trechsel et al., *op. cit.*, Art. 244 N 3; BGE 80 IV 252.

[254] Problems with definitions arise in the field of storing imitations. This is due to the need to carry out interpretative procedures aimed at determining whether this term is connotationally closer to storage or warehousing, see S.B. Kim, *op. cit.*, pp. 92–93; M.A. Niggli, *op. cit.*, Art. 244 N 18–21; C.L. Meili, S. Keller, *op. cit.* p. 1760; S. Trechsel et al., *op. cit.*, Art. 244 N 4. The Federal Supreme Court supported the latter position, see BGE 119 IV 266; BGE 103 IV 249.

[255] There is no legal definition of elements of large quantity. Each case requires an individual assessment. Some indications are provided in the case law, where aggravated type was not

in prison. Next, we should analyse the type defined in Art. 243 sec. 1 sentence 3 *in principio* of the Sw.p.c. It regulates the specific issue of fencing due to the specificity of the object of the executive action. On the basis of this provision, a person who imports or offers for sale a reproduction or imitation of a banknote or an object resembling a circulation coin, is liable to prosecution.[256] The execution of the constituent elements was threatened with a penalty of up to three years' imprisonment or a fine.

The last category of behaviours are the types of criminal preparation for counterfeiting money under Art. 247 sections 1 and 2 of the Sw.p.c.[257] In accordance with Art. 247 sec. 1 of the Sw.p.c., the criminalisation involves the behaviour of the person who, for the purpose of unlawful use,[258] manufactures or obtains[259] devices for counterfeiting or altering of metal money, paper money or banknote.[260] The

found when the offender performed an action of counterfeiting thirty-four thousand francs, see G. Stratenwerth, W. Wohlers, *op. cit.*, p. 481; E. Hafter, *op. cit*, p. 580; KG SG RS 1949 No. 238. The modified type was found in the case of the amount of eight hundred thousand francs or two hundred thousand dollars, see OGer ZH SJZ 1965, 144; KG SZ RS 2000 No. 795. The number of aggrieved parties does not interfere with the possibility of adopting the aggravated type. It is justified that the generic protected good under Title Ten is not an individual property interest, but the regularity of the money market and payment transactions, see C.L. Meili, S. Keller, *op. cit.* p. 1762.

[256] M.A. Niggli, *op. cit.*, Art. 327 N 27–29; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 480; C.L. Meili, S. Keller, *op. cit.*, p. 1754.

[257] M. Błotnicki, *Falschgeld…*, *op. cit.*, pp. 83–85.

[258] In order to be held liable, an intent relating to all elements of the objective side of the offence in question is required. It is emphasized that the perpetrator should act with the intention of actually using devices used to counterfeit money, see M.A. Niggli, *op. cit.*, Art. 247 N 19–20; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 43. The perpetrator must act in order to implement the elements of crimes under Art. 240 or Art. 241 of the Sw.p.c. Acting in order to commit offences under Art. 243 of the Sw.p.c. is not sufficient for attributing responsibility for preparation, see G. Stratenwerth, W. Wohlers, *op. cit.*, p. 483; C.L. Meili, S. Keller, *op. cit.* pp. 1785–1786; A. Donatsch, W. Wohlers, *op. cit.* p. 137; S.B. Kim, *op. cit.*, p. 98.

[259] Prohibited conduct consists in making or obtaining a device for counterfeiting money. The making should be understood in the same way as the production and means the creation of a given object for its intended use, see S.B. Kim, *op. cit.*, p. 97; M.A. Niggli, *op. cit.*, Art. 247 N 15. Obtaining a legal title to dispose of a thing in one's own interest or for the benefit of another person or their possessions. The legality of performing the causative action is irrelevant. The perpetrator can acquire the device both by legal action and as a result of the offence, see G. Stratenwerth, W. Wohlers, *op. cit.*, p. 483; A. Donatsch, W. Wohlers, *op. cit.* p. 136; S.B. Kim, *op. cit.*, p. 98; M.A. Niggli, *op. cit.*, Art. 247 N 17–18.

[260] The object of the executive action is a device for counterfeiting money. There are doubts as to whether only tools that serve or are intended for the objective observer to counterfeit money should be recognized as such, or also those that in the subjective assessment of the perpetrator are suitable for this. The dominant position is the one that considers as the devices referred to in Art. 247 sec. 1 of the Sw.p.c., only those that are typically intended to counterfeit money, see S. Trechsel et al., *op. cit.*, Art. 247 N 1; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 43; M.A. Niggli, *op. cit.*, Art. 247 N 11; S.B. Kim, *op. cit.*, p. 97. Most often, the objects of the executive activity include:

commission of the act was penalized under the threat of a penalty not exceeding three years' imprisonment or a fine. Preparatory actions included the unlawful use of devices that produce metal money, paper money or banknotes (Art. 247 sec. 2 of the Sw.p.c.).[261] Implementation of constituent elements of this type involves liability under penalty of imprisonment for a period not exceeding three years or a fine.[262]

D. Principality of Liechtenstein (Penal Code of 24 June 1987)[263]

Provisions typifying criminal acts interfering with the monetary order should be sought in the Special Part, Section 13 – "Crimes against the security of transactions with money, securities, treasury marks and non-cash legal tender".

Prohibited acts can be catalogued in four categories. The first consists of counterfeiting of currency and securities (§ 232 sec. 1, § 234 of the Li.p.c.) or other legal tenders (§ 241a of the Li.p.c.). The second includes the fencing of monetary tokens and their equivalents (§ 232 sec. 2, § 233 sec. 1 item 1 of the Li.p.c.) and other legal tenders (§ 241b of the Li.p.c.). The third framework includes the criminal circulation of counterfeit or altered money or assets (§ 233 sec. 1 item 2, § 236 of the Li.p.c.). The last category includes the preparation for counterfeiting of currency (§ 239 of the Li.p.c.) and other legal tenders (§ 241c of the Li.p.c.). The main part of the considerations will be preceded by a general comment referring to two provisions (§ 237 and § 241 of the Li.p.c.) the interpretation of which allows to obtain a correct interpretative result, taking into account the adequate scope of protection under criminal law. We will finish the discussion with the issues of active repentance (§ 240, § 241d and § 241g of the Li.p.c.).

We should start by signalling § 237 of the Li.p.c. As far as the object of the executive action of the offences described in § 232, § 233 and § 236 sec. 1 of the Li.p.c. is concerned, we should also list government banknotes or banknotes that are not legal tender, pledges, bonds, shares or other participation certificates, interest coupons, dividend coupons – provided that these values are issued to the bearer. The

negatives, plates, dies, stamping dies and other specific printing accessories. In turn, cameras, photocopiers or printing devices are not given this status, see M.A. Niggli, *op. cit.*, Art. 247 N 14; S.B. Kim, *op. cit.*, p. 97; A. Donatsch, W. Wohlers, *op. cit.* p. 136.

[261] It is worth noting that Art. 247 sec. 2 of the Sw.p.c. does not apply to devices used to counterfeit money, but refers to devices by means of which an authorized person, in the scope of normal activities, produces authentic monetary tokens. Criminalization boils down to the unlawful – that is without the required permission – use of devices used for the legal issuance of money, see C.L. Meili, S. Keller, *op. cit.* pp. 1786–1787; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 45; G. Stratenwerth, W. Wohlers, *op. cit.*, p. 483; M.A. Niggli, *op. cit.*, Art. 247 N 30.

[262] M. Błotnicki, *Falschgeld…*, *op. cit.*, p. 85.

[263] Strafgesetzbuch vom 24. Juni 1987 (https://www.gesetze.li/konso/1988037000?search_text=Strafgesetzbuch&search_loc=text&lrnr=&lgblid_von=&observe_date=01.01.2021 [access: 1.12.2022]), hereinafter referred to as Li.p.c.

above reasoning should be supplemented with the note contained in § 241 of the Li.p.c. The provisions of Section 13 shall also apply to foreign currency, securities and other legal tenders.

Crimes grouped in the first category are opened by the type from § 232 sec. 1 of the Li.p.c. Pursuant to the above provision, whoever counterfeits or alters monetary tokens with the intention of putting them into circulation as authentic and unaltered, is liable to prosecution. In the case of implementation of signs of type, the offender is subject to penalty from one year to ten years' imprisonment.[264] A specific type of counterfeit – concerning the altering of monetary tokens – is regulated in § 234 sec. 1 of the Li.p.c. A person who decreases the weight of a coin with the intention of being issued as a full-value coin, is liable to prosecution. The offence was penalized under the threat of imprisonment from six months to five years. As regards the type from § 234 sec. 2 Li.p.c., a person who decreases the value of a coin with the intention of issuing it as full value (item 1) or passes it on to another person as authentic (item 2), is liable to imprisonment for up to three years. An aggravating element is also provided for this type. It is the commission of an act in relation to coins whose nominal value exceeds three hundred thousand Swiss francs. In this case, the penalty of imprisonment ranges from six months to five years. The criminalisation of counterfeiting other legal tenders is addressed in § 241a of the Li.p.c. The criminal prohibition applies to the counterfeiting or processing of a non-cash legal tender with the intention of using them in legal transactions as authentic (sec. 1).[265] The analyzed act was penalized with imprisonment for a period not exceeding three years. On the other hand, in § 241a sec. 2 of the Li.p.c., we find the description of an aggravated form of counterfeiting other legal tenders. The execution of a crime in order to obtain a financial benefit or as a member of a criminal organization was included among the elements implying a stricter penalty. A criminal reaction in this case amounts to a prison sentence of six months to five years.

The second category includes fencing the object of an executive action. Attention should be paid to the type described in § 232 sec. 2 of the Li.p.c. Pursuant to the above provision, a person who, with the consent of a person participating in counterfeiting (§ 12 of the Code of Criminal Procedure)[266] or an intermediary, accepts counterfeit

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[264] The penalty of imprisonment is regulated in § 18 of the Li.p.c. It is adjudicated as a term or life imprisonment sentence (sec. 1). In the first case, it lasts not less than one day and may not exceed twenty years (sec. 2).

[265] The legal definition of a non-cash legal tender should be sought in § 74 sec. 1 item 9 of the Li.p.c. According to its content, a non-cash legal tender is any transferable or non-transferable physical legal tender that identifies the issuer, is protected against falsification or unauthorised use by means of a code, design or signature. In addition, it is to perform the functions of cash money in circulation or be used to issue cash money.

[266] The reference to the provision of § 12 of the Li.p.c. indicates the adoption of the concept of uniform perpetration in the school of the Principality of Liechtenstein. It is assumed that the

or processed money with the intention of placing it on the market as authentic and unchanged, is liable to imprisonment from one year to ten years. The type from § 233 sec. 1 point 1 of the Li.p.c. should be considered interesting from the point of view of its structure. It describes, as part of the identitification of the act, the continuation of the behaviour of the counterfeiter. This issue is also interesting because it provides for a statutory subsidiarity formula. On the basis of the above provision, criminal liability is imposed on anyone who, after counterfeiting or altering money with the intention of misleading another person as to its authenticity and quality, imports, exports, transports, takes from another person or otherwise acquires or possesses such currency, with a penalty of a custodial sentence not exceeding five years. Prosecution takes place on the condition that there are no grounds for it under § 232 sec. 2 of the Li.p.c. Attention should be paid to the type of aggravated form of fencing. In accordance with the contents of § 233 sec. 2 of the Li.p.c., a person who commits the offence[267] in respect of counterfeit or converted money with a nominal value exceeding three hundred thousand Swiss francs, is liable to stricter penalty. The above act was penalised by between one and ten years in prison. Another example of fencing is the act under § 241b of the Li.p.c. A person who accepts from another person a counterfeit or altered non-cash legal tender or obtains, transports or holds it for themselves or another person with the intention of using it in legal transactions as an authentic legal tender, shall be held liable. The implementation of element of the type is penalised with imprisonment for a period that does not exceed one year or a fine of up to seven hundred and twenty daily rates.[268] The last type belonging to the second category is the act stipulated in § 241f of the Li.p.c. A person who receives from another person a foreign non-cash legal tender for the purpose of obtaining for themselves or another person an unlawful financial advantage or for the purpose of enabling himself or another person to counterfeit the non-cash legal tender, or for the same purpose acquires, transports, transfers to another person or otherwise possesses it, is liable to prosecution. In such a case, the perpetrator is punished with up to a year of imprisonment or a fine not exceeding seven hundred and twenty daily rates.

Within the third category, we should indicate the type from § 233 sec. 1 item 2 of the Li.p.c. It describes the consecutive behaviour of a counterfeiter towards

crime is committed not only by the immediate perpetrator, but also by the one, who appoints another to perform it or otherwise contributes to its performance.

[267] The syntactic context of the provision and the need to read it within the framework of the principles of formal logic makes it necessary to state that this offense is the type of § 232 sec. 1 item 1 of the Li.p.c.

[268] The fine is imposed in daily rates, the number of which cannot be lower than two rates (§ 19 sec. 1 of the Li.p.c.). The amount of the rate is determined on the basis of the personal conditions and earning opportunities of the perpetrator at the time of the court's decision. It can vary between ten and a thousand Swiss francs (§ 19 para. 2 Li.p.c.).

the non-original currency. In accordance with the above provision, anyone who counterfeits or converts money and then passes it on as authentic and unchanged is penalised by up to five years' imprisonment. Marketing of counterfeit or altered monetary tokens with a nominal value transferring three hundred thousand Swiss francs is an aggravating element (sec. 2). The modified offence was penalised by between one and ten years in prison. Another example of criminalisation of marketing counterfeit money is the type of § 236 sec. 1 of the Li.p.c. On its basis, whoever transfers as authentic or full-value, counterfeit or altered money of reduced nominal value, if the third party received it in good faith (thus, not exposing itself to criminal liability), is liable to prosecution. The implementation of elements of the type was penalized with imprisonment for a period not exceeding one year or a fine of up to seven hundred and twenty daily rates.

The last category consists of types of preparation for counterfeiting currency, securities and other legal tenders. Paragraph 239 of the Li.p.c. requires a short commentary. A person who, with the intention of enabling themselves or someone else to commit an offence under § 232, § 234, § 237 or § 238 of the Li.p.c., manufactures, acquires for themself or someone else, stores for sale or transfers to someone else a means or tool which, due to its special nature, is expressly intended for such a purpose shall be liable to prosecution. What is interesting here is the wording used by the legislator, i.e. the term "expressly intended", which may generate discretion and incoherence in the characteristics of the offence that determine its criminal prosecution. Preparation is penalised with imprisonment for a period not exceeding two years. It is also worth noting § 241c of the Li.p.c. On its basis, criminal liability shall be incurred by anyone who, with the intention of enabling themselves or someone else to counterfeit a non-cash legal tender, manufactures, takes from another person, acquires for themselves or someone else, gives to another person or otherwise possesses a means or tool which, due to its specific nature, is obviously intended for such a purpose. The summary of the content of the above provision from § 239 of the Li.p.c. makes it possible to state that the former is characterized by further increased precision, indicating the "obviousness of the purpose" of a specific means or device intended for counterfeiting. The variant in the form of preparation was also penalised with imprisonment for a term not exceeding one year or a fine of up to seven hundred and twenty daily rates.

Reflection is required on the specific circumstances that exclude punishability.[269] In this context, we will talk about institutions of active repentance. The first of them

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[269] Speaking of specific solutions which imply the exclusion of the punishability of the conduct of the perpetrator, it is first necessary to analyse the general institutions leading to the same effect. In this context, attention should be paid to § 16, which describes the general institution of active repentance. The perpetrator of an attempt or participation in an offence shall not be punished if they voluntarily withdrew from the performance or (if more than one perpetrator participates in the implementation of the offence) prevents its performance or avoids the resulting

is located in § 240 sec. 1 of the Li.p.c. The perpetrator of the acts described in § 232–234 and § 237–239 of the Li.p.c. is not liable to a penalty when they voluntarily: abandoned the activity referred to in these provisions before its completion (item 1); destroyed counterfeit or altered money, reduced-value money, securities and devices used to counterfeit them or put them at the disposal of the procedural authority (item 2); or notified the procedural authority or otherwise eliminated the risk that as a result of their activity or activitiy of other persons participating in a criminal venture, the counterfeit or altered money marks or securities will be marketed or issued as authentic, unchanged or full-value (item 3). Pursuant to § 240 sec. 2 of the Li.p.c., the perpetrator of the crime is not punishable also in the event when the threats referred to in sec. 1 item 1–3 do not exist or have been eliminated without his participation, but the perpetrator voluntarily attempted to prevent them without knowing about the purposelessness of their behaviour. We find another example of exclusion of punishability in § 241d of the Li.p.c. According to its content, there is no penalty for offences described in § 241a–241c of the Li.p.c. for those, who voluntarily destroy a non-cash legal tender before it is used in legal transactions or destroys a false instrument before it is used for this purpose or otherwise eliminates the risk of such use of a means or instrument (sec. 1). If the danger of such use did not exist or was eliminated without the participation of the perpetrator, they are not liable to punishment if, without knowing it, they voluntarily attempted to prevent it (sec. 2).

4. Scandinavian and Baltic States

A. Kingdom of Denmark (Penal Code of 15 April 1930)[270]

Provisions specifying the offences can be found in the Particular Part, Chapter XVIII – "Offences related to legal tender".

Offences grouping conduct that interferes with the authenticity of a circulating currency can be divided into three categories.[271] The first includes the types of money

danger (sec. 1). In addition, the perpetrator is not punished even if, without their fault, there is no performance or effect, but without knowing it, he voluntarily tried to prevent the performance or effect from occurring (sec. 2).

[270] Straffeloven, LOV nr 127 af 15/04/1930 (source: https://www.retsinformation.dk/eli/lta/2020/1650 [access: 1.12.2022]), hereinafter referred to as Da.p.c.

[271] Money is any legal tender in the form of banknotes or coins, issued by the State or by other entities authorised to do so, which have a declared value and are intended for general circulation (so-called "current money"). This term does not cover bills of exchange, bearer securities such as government bonds, or unauthorized banknotes. Whether the money is convertible or not is irrelevant for its protection under criminal law. Consequently, it should be assumed that coins or banknotes which have ceased to be legal tender are covered by the protection provided for in Chapter XVIII of the Da.p.c. for as long as they are used as a legal tender or are subject to

counterfeiting (§ 166 sentence 1 of the Da.p.c.) or other legal tenders (§ 169a of the Da.p.c.). The second category includes fencing-related behaviour in relation to imitation currency (§ 166 sentence 2 of the Da.p.c.). The third one accumulates offences related to placing a counterfeit value on the market, which may take both a physical (§ 167, § 168 and § 169 of the Da.p.c.) and non-physical form (§ 170 of the Da.p.c.).

First of all, attention should be paid to § 166 sentence 1 of the Da.p.c. According to its content, whoever counterfeits or alters[272] money in order to put it into circulation as authentic, is subject to liability.[273] The analysis of the constituent elements leads to the conclusion that the act was committed with a direct directional intent. Violation of this norm was sanctioned with imprisonment for up to twelve years.[274] Supplementing the protection against counterfeiting, in the context of attacks on other legal tenders, should be sought in § 169a sec. 1 sentence 1 of the Da.p.c. It regulates that a fine[275] or imprisonment for a period not exceeding one year and six

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exchange, see O.H. Krabbe, *Borgerling Straffelov af 15. April 1930 Og Lov Af S.D. Om Ikrafttraeden ag Borgerling Straffelov M.M. Udgivet Med. Kommentarer*, København 1931, p. 207.

[272] It is worth paying attention to the view that the difference between counterfeiting and altering currency occurs on the basis of the penalty. This is due to the assumption that counterfeiting money carries a greater quantum of social harm than its altering. This is justified by the fact that altering consists only in giving the original money a seemingly greater value, see *Ibidem*, p. 208.

[273] It is required for the produced coin or banknote produced to bear an external resemblance to money which creates a legitimate possibility of putting it into circulation as authentic. When the counterfeit has not reached this degree of convergence with the original currency, it is argued that the perpetrator may be held responsible for fraud, at most, *Ibidem*, p. 209.

[274] According to § 31 of the Da.p.c., penalties include imprisonment and a fine. Pursuant to § 33 sec. 1 of the Da.p.c., a sentence of imprisonment is imposed as a life sentence or a term penalty for a period of not less than seven days and not exceeding sixteen years. As part of the extraordinary aggravation, it is permissible to adjudicate up to twenty years (§ 33 sec. 2 of the Da.p.c.). There is also a directive to minimise the criminal penalty against a minor offender. Pursuant to § 33 sec. 3 of the Da.p.c., who at the time of the crime was under eighteen years of age, may not be sentenced to life imprisonment. The § 33 sec. 4 of the Da.p.c., lays down the directive for the calculation of term. If the sentence of imprisonment imposed does not exceed three months, it shall be adjudged in days. In the case of a higher penalty, the isolation penalty is imposed in months and years.

[275] A fine is a financial sanction paid to the State Treasury (§ 50 sec. 1 of the Da.p.c.). It can be an independent or and additional punishment, imposed in addition to another type of punishment. Its adjudication is possible if the offender obtained or intended to obtain a financial benefit for himself or other persons from committing the crime (§ 50 sec. 2 of the Da.p.c.). Pursuant to § 51 sec. 1 of the Da.p.c. a fine is adjudged in daily rates, the amount of which is set in the range of one to sixty rates. The amount of one rate is to correspond to the average daily income of the perpetrator, taking into account their financial situation and other circumstances affecting earning opportunities. A daily rate may not be lower than two Danish kroner. If, within the framework of the fine referred to in § 50 sec. 2 of the Da.p.c., the application of the daily rate would result in setting its amount at a level lower than considered reasonable (taking into account the profit

months is imposed on anyone who intends to use it as authentic, illegally produces or obtains counterfeit electronic money.[276] It is worth paying attention to the aggravated type of counterfeiting of other legal tenders (§ 169a sec. 3 of the Da.p.c.). The aggravating element, implying a penalty of up to six years' imprisonment, is the fact that the conduct is of a particularly serious nature. The legislator provided examples of factors, the occurrence of which determines the determination of the modified type. These include: the manner of committing the offence or the level of the amount constituting the subject of the offence.

As part of the second category, attention should be paid to § 166 sentence 2 of the Da.p.c. This provision regulates a prohibited act consisting in acquiring for oneself or other persons counterfeit or processed money for marketing it as authentic. In the case of implementation of the elements of this type, the offender is subject to imprisonment for a period not exceeding twelve years.

The last category consists of types of marketing counterfeit currency and other legal tenders. It is necessary to pay attention to § 167 of the Da.p.c. According to its content, dissemination of counterfeit or altered money is subject to criminalisation on terms equal to its counterfeiting or alteration. If the perpetrator has received counterfeit money in good faith, the penalty may be reduced to a fine. It is worth analyzing the act typified in § 168 of the Da.p.c. It defines liability of those who issue money that they suspect to be counterfeited or altered. Exceeding the sanctioned norm was threatened with a penalty of up to three years of imprisonment. If the offender has received money in good faith, the court may waive the penalty. The type from § 169 of the Da.p.c., where a special form of putting the imitation into circulation is described, should be considered interesting. A fine shall be imposed on anyone who transports, imports or distributes items which, in their form, bear a significant external resemblance to money or to a financial instrument intended for general circulation.

B. Iceland (General Penal Code of 12 February 1940)[277]

The provisions typifying crimes constituting attacks on the authenticity of currency, securities and other legal tenders should be sought in Chapter XVI – "Counterfeiting and other currency crimes".

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obtained or expected by the offender from the crime), the court may apply a different case-law model, in place of the daily rate.

[276] Counterfeit electronic money is a means which, while not being genuine electronic money, is suitable for use as such (§ 169 sec. 2 of the Da.p.c.).

[277] Almenn hegningarlög, 1940 nr 19 12. Febrúar (source: https://www.althingi.is/lagas/nuna/1940019.html [access: 1.12.2022]), hereinafter referred to as Ic.p.c.

From the point of view of liability models under Icelandic legislation, two basic categories can be distinguished. The first one, to which the prohibited acts of counterfeiting or altering of money belong (Art. 150 of the Ic.p.c.) or securities (Art. 154 sentence 2 of the Ic.p.c.). Within the second category, a number of behaviors can be distinguished, which boil down to circulation of the imitation of money marks (Art. 151–153 of the Ic.p.c.) or securities (Art. 153–154 of the Ic.p.c.).

Within the first category we should point our attention to the type from Art. 150 sec. 1 of the Ic.p.c. It states that who counterfeits money for the purpose of putting it into circulation as an authentic currency is liable to prosecution. The sanction is imprisonment for up to twelve years.[278] The Icelandic legislator provided for the construction of an mitigated form of counterfeiting. The modifying element is the fact that as a result of the counterfeiting, the material value of the currency has decreased. In this case, the offender is punishable by imprisonment of up to four years. It is also worth paying attention to the provision typifying the crime of counterfeiting securities (Art. 154 sentence 2 of the Ic.p.c.). On its basis, who, without statutory authorization, issues bearer bonds that can be used as a legal tender between both non-individual and individual entities or there is a high probability of using them in such a capacity, is liable to prosecution. This type was penalised under penalty of a fine or imprisonment for a period not exceeding three months.[279] The provisions of the above regulation do not apply to foreign bills of exchange.

The second category includes different types of circulating false values. The first is the act defined in Art. 151 sentence 1 of the Ic.p.c. It criminalises the placing on the market of money of which inauthenticity the perpetrator is aware. As regards sanctions, a reference to counterfeiting money is foreseen. A mitigated form of circulating false values was also provided for (Art. 151 sentence 2 of the Ic.p.c.). The mitigating element concerns the psychic attitude of the perpetrator to the alleged

[278] The penalties are fine and imprisonment. The latter shall be adjudged in days, months or years (Art. 31 sec. 1 and 2 of the Ic.p.c.). Pursuant to Art. 34 sec. 1 of the Ic.p.c., the custodial penalty may be a life sentence or a term penalty, not shorter than thirty days and not exceeding sixteen years. If the provision imposes an isolation penalty on the perpetrator, it should be referred to as imprisonment for a specified term (Art. 34 sec. 2 of the Ic.p.c.). A special provision may alter this requirement.

[279] Unless a special provision provides otherwise, the fine is a pecuniary penalty – the income of the State Treasury. It may be imposed in addition to the imprisonment penalty (cumulative penalty) if the perpetrator has achieved or intended to achieve for himself or another person a financial benefit from committing an offence (Art. 49 sec. 2 of the Ic.p.c.). The factors taken into account when imposing a fine include: the income and property of the perpetrator, their salary, maintenance obligations and other factors affecting their ability to pay. In addition, all benefits and revenues resulting from the crime are taken into account (Art. 51 sec. 1 of the Ic.p.c.). Pursuant to Art. 52 of the Ic.p.c., the court has the power to set a deadline for payment of the fine, which may not exceed six months from the decision or conclusion of the settlement.

act. If, at the time of receipt of the currency, they remained in good faith and did not suspect that these were counterfeits, a sentence of imprisonment of up to a year or a fine may be imposed. Another type of marketing is included in Art. 152 sentence 1 of the Ic.p.c. Pursuant to the said provision, anyone who puts into circulation money that they suspect to be unoriginal is subject to imprisonment for up to two years. If, at the time of receipt, the perpetrator believed that the obtained monetary tokens were authentic, a fine may be imposed. If the damage is repaired, the court may waive the penalty (Art. 152 sentence 2 of the Ic.p.c.). Attention should be paid to the type of Art. 153 of the Ic.p.c. It says that a fine is imposed on anyone who imports or distributes among the participants in trading items that resemble money or securities constituting a medium of exchange in their structure and finish. The last is the act typified in Art. 154 sentence 1 of the Ic.p.c. On its basis, who, without statutory authorization, imports or brings bearer bonds that can be used as a legal tender between both non-individual and individual entities or there is a high probability of using them in such a capacity, is liable to prosecution. The type will not apply when the object of the executive action is a foreign promissory note.

C. Kingdom of Norway (Penal Code of 20 May 2005)[280]

Typifying provisions that are of relevance for the subject of work should be sought in Part Two – "Criminal Acts", Chapter XXIX – "Protection of trust in money and certain documents".

Under Norwegian legislation, offences against the reliability and authenticity of the traded monetary tokens can be divided into four categories. The first consists of types of counterfeiting or altering of the circulating currency (§ 367 sec. 1 sentence 1 of the N.p.c.). The second category includes acts related to the fencing of inauthentic values (§ 367 sec. 1 sentence 2 of the N.p.c.). The third category refers to the release of imitation currency into circulation (§ 367 sec. 2 sentence 1 of the N.p.c. and § 367 sec. 2 sentence 2 of the N.p.c.). The last category is the preparation for the counterfeiting of money (§ 369 of the N.p.c.).

As for the types from the first category, it is necessary to pay attention to § 367 sec. 1 of the N.p.c. Anyone who intending to market it, counterfeits or alters circulating currency, is liable to prosecution. The offence was prohibited under penalty[281]

[280] Lov om straff, LOV-2005-05-20-28 (source: https://lovdata.no/dokument/NL/lov/2005-05-20-28/ [access: 1.12.2022]), hereinafter referred to as N.p.c.

[281] Pursuant to § 29 of the N.p.c., the following types of criminal penalties may be adjudged: deprivation of liberty imposed in accordance with Chapter Six (letter a); custody imposed in accordance with Chapter 7 (letter b); community service imposed in accordance with Chapter 8 (letter c); penalties imposed on juveniles (letter d) or a fine imposed on the basis of Chapter 9

of a fine[282] or imprisonment for up to three years.[283] In addition, § 368 of the N.p.c. defines an aggravated type. The element implying a stricter penalty is the particularly serious nature of the causative action. When determining the modifying element, the court should pay attention to whether the counterfeiting concerns a currency of significant value or whether the activity carried out is of a systematic nature. Exceeding the prohibition norm was penalized under the threat of a fine or imprisonment for a period not exceeding ten years.

The second category is behaviour related to the fencing of a counterfeit. A fine or imprisonment for a period not exceeding three years shall be imposed on a person who, with the intention of putting into circulation, transports, acquires or receives counterfeit or processed money (§ 357 sec. 1 sentence 2 of the N.p.c.).

As part of the third category, it is worth paying attention to § 367 sec. 2 sentence 1 of the N.p.c. The provision provides for liability under penalty of a fine or imprisonment of up to three years threatening whoever issues counterfeit or converted money as an authentic monetary token. An inadvertent type of release into circulation of false values was also provided for. Subject to sanction under § 367 sec. 2 sentence 2 of the N.p.c. is anyone, who by their negligence contributed to the marketing of a counterfeit or altered monetary token. The sanction is a threat of a fine or imprisonment for up to a year.

The last category is the preparation for currency counterfeiting. This type was defined in § 369 of the N.p.c. A person who prepares for the counterfeiting of money, manufactures or acquires equipment or other devices intended for counterfeiting

(letter e). In the case of cumulation of penalties, the cumulative penalty should be a proportionate reaction to the act committed.

282 Pursuant to § 53 s. 1 of the N.p.c. a fine as an independent penalty may be imposed provided that it is provided for as part of the statutory threat of a penalty. When determining the amount of the fine, the court takes into account such circumstances as: the perpetrator's income, their financial condition, the obligation to contribute to the maintenance of another person, debts and other factors affecting earning opportunities (§ 53 sec. 2 of the N.p.c.). If the perpetrator is under eighteen years of age at the time of the act, the court may order a suspension of execution of the sentence for a trial period, which in principle amounts to two years (§ 53 sec. 4 N.p.c.). Pursuant to § 54 of the N.p.c., a fine may be imposed as a cumulative penalty in addition to a custodial sentence or detention, even if the perpetrator has been sentenced to a financial penalty.

283 Pursuant to § 31 sec. 1 of the N.p.c., the lower limit of the term of imprisonment is fourteen days. A special provision may alter this requirement. The deprivation of liberty shall be for a fixed term. In the case of a sanction of up to one hundred and twenty days, imprisonment is adjudged in days; over four months, it is determined in months and years (§ 31 sec. 2 of the N.p.c.). Pursuant to § 33 sec. 1 of the N.p.c., a perpetrator who was under eighteen years of age at the time of the act, may be sentenced to imprisonment unconditionally only when it is deemed particularly necessary. Such a penalty may not exceed fifteen years, even if the statutory threat framework allows for a more severe penalty (§ 33 sec. 2 of the N.p.c.).

or forging currency, is liable to prosecution. Under the statutory threat, a fine or imprisonment of up to two years is provided for.

D. Kingdom of Sweden (Penal Code of 21 December 1962)[284]

On the basis of Swedish legislation, the regulations that typify acts constituting attacks on the currency should be sought in Section 2, Chapter 14 – "On offences related to counterfeiting".

Acts that undermine the credibility of domestic and foreign monetary tokens can be divided into three main categories. The first includes the counterfeiting or alteration of both the circulating currency and one that was withdrawn, but still subject to exchange (§ 6 of the S.p.c.). The second consists of behaviours that can be described as the fencing of imitation money (§ 7 of the S.p.c.). The third category includes the types of marketing of inauthentic monetary tokens (§ 10 and 11 of the S.p.c.). In addition, the subject of consideration will be the stage forms of the title offences (§ 13 of the S.p.c.) and the institution of active repentance, which has a twofold character (§ 12 of the S.p.c.).

A few words of reflection are required on the application and applicability of the Swedish Criminal Code concerning the venue. Attention should be paid to § 3 sec. 6 of the second chapter of the S.p.c., which regulates the commission of the offense outside Sweden. Under that provision, in the case of offences committed outside the national borders, a judgment may be issued in accordance with Swedish law before the national court, *inter alia*, in respect of acts constituting counterfeiting of money or an attempt to commit that offence.

Attention should be paid to Chapter 14 of the S.p.c. and its § 6 sec. 1. A person who counterfeits or converts a banknote or coin that is valid in Sweden or abroad or that has been decided to issue it but is not yet a legal tender, shall be liable to criminal prosecution. In the case of implementation of elements of type, the perpetrator is subject to a sentence[285] of up to four years' imprisonment.[286] The modified types of currency

[284] Brottsbalken, SFS 1962/700, Ikraft: 1965-01-01 (source: http://rkrattsbaser.gov.se/sfst?bet=1962:700 [access: 1.12.2022]), hereinafter referred to as S.p.c.

[285] Pursuant to § 8 of the S.p.c., Chapter 1 – "On Offences and Criminal Sanctions", apart from the criminal sanction, the commission of an offence may entail a consequence in the form of confiscation of property, a financial penalty or other specific legal ailments, or creation on the part of the injured party of the right to seek compensation for damage, cf. S. Frankowski, [in:] S. Frankowski (red.), *op. cit.*, pp. 350–351.

[286] Pursuant to Chapter 26 – "About Prison" § 1 sec. 1 of the S.p.c., a custodial sentence shall be imposed in accordance with the content of the sanction provided for in the typing provision, for a specified period or for life. The term of imprisonment shall be from fourteen days and shall not exceed ten years. In the event of a coincidence, as part of a statutory threat, of a term of imprisonment and a life sentence, a term of imprisonment may be imposed for a period not exceeding

falsification should be analyzed, i.e. the mitigated one (ch. 14 § 6 sec. 2 of the S.p.c.) and the aggravated one (ch. 14 § 6 sec. 3 of the S.p.c.). Within the first, the modifying element is a case of minor importance. Such an act was criminalised under penalty of a fine or imprisonment for up to six months.[287] The second of the modified types is the offense under ch. 14 § 6 sec. 3 of the S.p.c. According to the wording of that provision, the aggravating element occurs when an offence takes on a serious character. In this case, the perpetrator is punishable by two to eight years' imprisonment.

The second category is behaviour that comes down to fencing. This issue is regulated in ch. 14 § 7 sec. 1 of the S.p.c. Under that provision, whoever, with the intention of being misappropriated, acquires, puts at the disposal of another person, receives, stores, transports or performs any other similar act involving a counterfeit or altered banknote or coin which is valid in Sweden or abroad or one in respect of which a decision has been taken on its issue but which does not yet constitute legal tender, is liable to prosecution. The implementation of such elements was threatened with imprisonment for up to two years. It is worth noting that there are also modified types of fencing. The mitigated form is the offense from ch. 14 § 7 sec. 2 of the S.p.c. The perpetrator shall be sentenced to a term of imprisonment not exceeding six months, where their conduct is minor. In turn, the aggravated type of fencing is described in ch. 14 § 7 sec. 3 of the S.p.c. On the basis of the above provision, whoever commits a currency counterfeit and this act is of a serious nature is liable to a penalty of imprisonment from six months to six years.

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eighteen years. The special provision may provide for additional circumstances, the occurrence of which allows the imposition of a penalty above the maximum amount of isolation, i.e. ten years. Such *a lex specialis* is found in ch. 1 § 2 sec. 2 of the S.p.c., regulating the total penalty. A term of imprisonment may exceed the most severe of the maximum component penalties, but may not exceed eighteen years; cf. *Ibidem*, pp. 351–357.

[287] The fine is regulated in Chapter 25 – "On Fines". Pursuant to ch. 25 § 7 of the S.p.c., fines constitute property penalties constituting state income. Pursuant to ch. 25 § 1 of the S.p.c., the fine is imposed either at daily rates, as a traditional or ticket fine. If the form of the fine is not specified for a given type, it is imposed at daily rates; however, if the equivalent of the fine would not exceed thirty rates, it is imposed as a lump sum. Further clarification of the rate system is included in ch. 25 § 2 of the S.p.c. The number of daily rates shall be fixed at not less than thirty and not more than one hundred and fifty. The amount of one rate is determined from fifty to a thousand Swedish kronor, taking into account the income earned by the perpetrator, their property, the maintenance obligation and the general financial situation. In particularly justified cases, the daily rate may be adjusted differently. It is not less than seven hundred and fifty Swedish kronor. The amount of the lump sum fine for a given crime is determined on the basis of a special calculation basis (ch. 25 § 4 of the S.p.c.). Its minimum amount is one hundred Swedish kronor. In the case of a cumulative fine and a coincidence of different categories of fines, the cumulative penalty is imposed at daily rates, provided that any of the sanctions constituting the basis for the cumulative penalty is a fine specified as to its amount (ch. 25 § 6 of the S.p.c.).

Within the third category, attention should be paid to the circulation of imitations of values, which are included in the framework of ch. 14 § 10 of the S.p.c. Whoever offers or markets or embezzles a counterfeit banknote or coin, shall be punished as a counterfeiter. This implies linking the sanction of placing counterfeit or converted money on the market with the criminal penalty provided for counterfeiting. We shall consider the crime under ch. 14 § 11 of the S.p.c. an interesting one. The provision establishes the second type of releasing inauthentic securities into circulation, where we read that anyone who, in a manner other than described in § 10, distributes to the public something that can be easily confused with the current banknote or coin, is subject to a fine.

When analysing prohibited acts, two general issues should be noted. The first will be the regulation of the stage forms of crimes; the second will be the institution of active repentance. Pursuant to ch. 14 § 13 of the S.p.c., liability on the basis of the principles of ch. 23 is applied to the perpetrator of an attempt[288] or preparation[289] to commit the crime of currency counterfeiting. The same rules apply to the attempted fencing of inauthentic monetary tokens, which consists in obtaining or accepting a counterfeit value. It is worth noting that the attempt of the above types does not give rise to criminal liability if they are classified as minor cases.

When active repentance is considered, it is worth paying attention to ch. 14 § 12 of the S.p.c., regulating this issue in two ways.[290] First, a person who committed an act referred to in Chapter 14 but voluntarily prevented the danger before a significant inconvenience arose may be sentenced to a lighter penalty than the one provided for under the statutory threat. The first form of active repentance is

[288] A person who has started to commit a crime without committing it is, in clearly indicated cases, guilty of attempting to commit a crime. Liability is conditional on the occurrence of a danger that the offender's action will lead to the committing (i.e. a specific, immediate danger) or such a danger was excluded only due to the occurrence of random causes (ch. 23 § 1 S.p.c.). The penalty for attempting to commit a crime is set at a level not higher than in the case of committing it. No sentence other than deprivation of liberty may be imposed where a penalty of imprisonment for two years or more was provided for.

[289] There is no formal definition of preparation for a crime. Only the issue of the threat of punishment is indicated. As part of ch. 23 § 2 of the S.p.c., it was assumed that the penalty for preparation is set at a level lower than the upper limit of the statutory threat and it may also be lower than its lower limit. In relation to the perpetrator of an attempt, the penalty of imprisonment for two years is imposed only for crimes punishable by deprivation of liberty for a term of not less than six years.

[290] The regulation of ch. 14 § 12 of the S.p.c. constitutes a special form of active repentance. Pursuant to ch. 23 § 3 of the S.p.c., the perpetrator who voluntarily prevented the performance of an act by withdrawing from it or in any other way interrupting its performance, is not liable for the attempt, preparation or accessorial form of the crime. If the offence was committed, the perpetrator who illegally used the tool will not be held liable if they voluntarily prevented its criminal use.

an institution of extraordinary punishment. Secondly, if the danger posed by the perpetrator was minor and no punishment of more than six months' imprisonment was provided for the offender, the offender will not be held liable.

E. Finland (Penal Code of 19 December 1889)[291]

The typifying provisions relevant for our considerations are found in Chapter 37 – "Crimes against legal tender".

The types grouped there can be divided into four categories. The first consists of crimes of counterfeiting of circulating monetary tokens (ch. 37 § 1 sentence 1 of the Fi.p.c.) or the creation of objects constituting an imitation of money (ch. 37 § 7 of the Fi.p.c.). The second includes acts consisting in the fencing of false values (ch. 37 § 1 sentence 2 of the Fi.p.c.). The third category includes the marketing of inauthentic money (ch. 37 § 1 sentence 3 of the Fi.p.c. and ch. 37 § 5 of the Fi.p.c.) or its imitation (ch. 37 § 7 sentence 2 of the Fi.p.c.). In the last category, one should distinguish *sui generis* preparation for currency counterfeiting (ch. 37 § 4 of the Fi.p.c.). The subject of consideration will also be the liability of legal entities for the commission of the title crimes (ch. 37 § 14 of the Fi.p.c.). Considerations should start with the type from ch. 37 § 1 sentence 1 of the Fi.p.c. According to the above-mentioned provision, whoever produces counterfeit money or counterfeits or converts money in order to put it into circulation, is liable to prosecution.[292] The offence was criminalised under penalty of imprisonment ranging from four months up to four years.[293] In addition, it is worth paying attention to the aggravated types of counterfeiting included in ch.

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[291] Rikoslaki, 19.12.1889/39 (source: https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001 [access: 1.12.2022]), hereinafter referred to as Fi.p.c.

[292] Attention should be paid to ch. 37 § 12 of the Fi.p.c., which constitutes an explanation of statutory expressions. For the purposes of Chapter 37, the term "money" means banknotes and coins which are the legal tender in Finland or in another country (item 1). The "payment means" are to be construed as a bank, debit or credit card, cheque or other instrument or digital storage medium by means of which payments, withdrawals or transfers may be effected or the use of which is a prerequisite for making such payments (item 2) and supplemented payment forms or cards or blanks intended for the production of a legal tender (item 3). The regulations regarding payment means also apply to cash proofs, collection proofs issued by a credit institution subject to public supervision (sec. 2). The provisions on money apply to banknotes and coins before they are put into public circulation (ch. 37 § 12 sec. 3 of the Fi.p.c.).

[293] Pursuant to ch. 2c § 2 of the Fi.p.c., an incarceration penalty is imposed for a definite period of time or as a life imprisonment. In the first case, it shall be at least fourteen days and shall not exceed twelve years. When issuing a cumulative judgment, it is possible to adjudge above the aforementioned upper limit of sanctions, up to fifteen years. A custodial sentence shall be adjudged in principle in days, months or years. However, if the sentence does not exceed three months, it must be counted in days.

37 § 2 items 1 and 2 of the Fi.p.c. The first of these applies when the performance of the causative act concerns a significant amount or value of counterfeit or altered money (item 1). The second refers to a situation where the crime is committed in a particularly systematic manner (item 2). In both cases, the perpetrator is punishable by imprisonment for two to ten years. It is worth signaling the criminalization of an attempt.[294] The Finnish legislator used the construction of mitigated forms under ch. 37 § 3 of the Fi.p.c. If the act of the perpetrator, taking into account the amount and value of the counterfeit currency, the amount of the financial benefit obtained or the damage caused, and other factors related to the offense committed, is minor, the perpetrator may be fined or imprisoned for up to two years for minor counterfeiting.[295] Another type that was included in the first category is the crime

[294] The definition of the precompletion stage of a prohibited act is contained in ch. 5 § 1 et seq. of the Fi.p.c. A type is considered to have been committed in the form of an attempt when the perpetrator has started its implementation and has created a risk of committing it. The attempted crime also takes place in the absence of a threat to legal goods on the part of the perpetrator, if this is due to random reasons, independent of the subject of the crime. The liability depends on the acceptance of qualification regarding the implementation of intentional crime. Unless a special provision provides otherwise, when deciding on a penalty, the regulations contained in ch. 6 § 8 of the Fi.p.c. It is worth noting ch. 6 § 8 sec. 2 of the Fi.p.c., where we read that the penalty imposed on the perpetrator of an attempt may not exceed three quarters of the upper limit of the statutory threat of imprisonment or a fine and may not be lower than the lower limit of the sanction indicated in the typing provision. If the execution of the constituent elements of the type was threatened with a life imprisonment, the penalty for an attempt is two to twelve years' imprisonment. The issue of the active repentance of the perpetrator of the attempt should be borne in mind. Pursuant to ch. 5 § 2 of the Fi.p.c., an attempt is unpunished if the offender has voluntarily withdrawn from the prohibited act or otherwise prevented its effect. More complex requirements are placed on those attempting it in a multi-person configuration. In such a case, effective repentance relieves the perpetrator, accomplice and instigator of responsibility only if it has induced others to abandon the offence or otherwise prevented its effect. Exemption from punishment can also be enjoyed by such an attempted perpetrator when the crime was not committed or the criminal result did not arise for reasons beyond their control, as long as they made a serious effort to prevent the crime from being committed or the result from occurring.

[295] Pursuant to ch. 2a § 1 sec. 1 of the Fi.p.c., a fine is adjudged in daily rate system, from one to one hundred and twenty daily rates. The value of one rate should be set at a reasonable level in relation to the perpetrator's ability to pay. In ch. 2a § 2 sec. 2 of the Fi.p.c., we find a directive for sensible determining the amount of the financial penalty. A rate of one-sixtieth of the average monthly remuneration of the perpetrator was considered reasonable (after deduction of public law receivables and fees indicated in the provisions implementing the Penal Code and a fixed amount allocated to basic expenses). If the perpetrator is subject to maintenance obligation, the value of the rate may be reduced. The basis for calculating the average monthly salary is the taxable income of the perpetrator. If it cannot be reliably determined on the basis of tax records or has changed significantly since the determination of the tax, it can be estimated on the basis of other available evidence (ch. 2a § 2 sec. 3 of the Fi.p.c.). The issue of the fine is presented differently in the case of several fines or the convergence of the fine with a financial penalty, and consequently the need

from ch. 37 § 7 sentence 1 of the Fi.p.c. It is at the disposal of the said provision who, for the purpose of public dissemination, obtains a form, sign, image or other object that is deceptively similar to currency. The type was penalized with a fine or imprisonment for a period not exceeding one year.

Within the second category we should indicate the act described in ch. 37 § 1 sentence 2 of the Fi.p.c. In accordance with that provision, a person who, for the purpose of placing on the market, imports, exports, acquires, accepts or transports currency in respect of which he knows to be counterfeit or forged, is liable to prosecution. Breaking this norm was punishable by imprisonment from four months to four years.

What requires our analysis in the scope of the third category, is the act from ch. 37 § 1 sentence 3 of the Fi.p.c. On the basis of the above provision, it is criminalised to transfer to another person for the purpose of marketing a currency of which the perpetrator knows that it is counterfeit or altered, and the penalty is from four months to four years' imprisonment. A special type of release into circulation is included in ch. 37 § 5 of the Fi.p.c. According to the said provision, a person who, having received counterfeit or processed money, transfers it to another person in order to re-circulate it as authentic, is liable to prosecution. The sanction shall be a fine or a custodial sentence not exceeding one year. In addition, the attempt to commit this crime was criminalised. The last type of putting the imitation into circulation is the act included in ch. 37 § 7 sentence 2 of the Fi.p.c. On the basis of this provision, criminal liability is imposed on anyone who, for the purpose of public dissemination, places on the market a form, sign, image or other object that is deceptively similar to currency. In this case, the perpetrator faces a fine or imprisonment for a period not exceeding one year.

The last category includes *sui generis* preparation for counterfeiting, regulated in ch. 37 § 4 of the Fi.p.c. A criminal offence is committed by anyone who, in order to commit money counterfeiting, manufactures, imports, possesses, obtains or receives an instrument, accessory, recording or software making it possible to commit such an offence. The execution of its constituent elements is sanctioned under the threat of a fine or imprisonment for up to two years.

Having discussed individual crimes from the perspective of the perpetrator – a natural person, several comments should be made regarding the commitment of the act by a collective entity. This issue is dealt with in ch. 37 § 14 of the Fi.p.c., containing a liability clause for a legal person. The provision also contains a catalogue of offences for the implementation of which a collective entity can be held liable. To the

for a total (joint) fine. This issue is discussed in ch. 7 § 3 sec. 2 of the Fi.p.c. If such a procedural situation occurs, a total fine is imposed, the value of which is increased by forty euros. This does not apply to the fine specified in the amount in euro (ch. 7 § 3 sec. 4 of the Fi.p.c.).

extent applicable, legal persons are subject to a penalty[296] for: money counterfeiting (ch. 37 § 1 sentence 1 of the Fi.p.c.), aggravated money counterfeiting (ch. 37 § 2 of the Fi.p.c.), minor counterfeiting of currency (ch. 37 § 3 of the Fi.p.c.), preparation for counterfeiting (ch. 37 § 4 of the Fi.p.c.) and the introduction of counterfeit currency into circulation (ch. 37 § 5 of the Fi.p.c.)

F. Estonia (Penal Code of 6 June 2001)[297]

Crimes against the credibility of money in circulation should be sought in Part 2, Chapter 19 – "Crimes against public trust", Section 1 – "Counterfeiting of legal tender and a mark or symbol established by the state".

Under Estonian legislation, types can be divided into four categories. The first includes counterfeiting of other legal tenders (§ 333 of the E.p.c.) and the creation of a simulacrum of monetary tokens (§ 334^2 sec. 1 sentence 1 of the E.p.c.). As part of the second, it is necessary to distinguish the types of criminal circulation of inauthentic monetary tokens (§ 333^1 of the E.p.c.), other legal tenders (§ 334 sec. 1 sentence 2 of the E.p.c.) and items intended to create the simulacrum of a legal tender (§ 334 sec. 1 sentence 1 of the E.p.c.). The third category is the fencing of the circulating currency (§ 334 sec. 1 sentence 1 of the E.p.c.). The last category consists of the preparation for counterfeiting of monetary tokens, securities and other legal tenders (§ 340 of the E.p.c.).

Before proceeding with the considerations, attention should be paid to § 332 of the E.p.c., which constitutes a framework provision, relevant for the interpretation of types grouped in the respective categories. It allows to obtain an interpretative result, which ensures an adequate scope of legal and criminal protection for the carriers of legal goods. Pursuant to § 332 of the E.p.c., the provisions of Section 1 also

[296] The regulation of the liability of collective entities is included in ch. 9 § 1 sec. 1 of the Fi.p.c. At the request of the prosecutor, foundations or other legal persons who have committed an offence in the course of their activities shall be fined. The liability of a collective entity occurs when a member of its statutory or other body or an entity with actual decision-making powers within a legal person has participated in or allowed the crime to be committed, also when the crime was not prevented due to lack of due diligence or care (ch. 9 § 2 of the Fi.p.c.). It is also defined, when the offence relates to the activities of a legal person. Pursuant to ch. 9 § 3 sec. 1 of the Fi.p.c., an offence is considered to be committed as part of the activity of a legal person if the perpetrator acted on behalf of or for the benefit of a collective entity, being its chairman of the management board or remaining with it in a professional relationship or employment relationship, or acted on the basis of a power of attorney granted by an authorized representative of that legal person. The provisions on the liability of collective entities do not apply to state or local government legal entities (chapter 9 § 1 sec. 2 of the Fi.p.c.).

[297] Karistusseadustik (source: https://www.riigiteataja.ee/akt/184411?leiaKehtiv [access: 1.12.2022]), hereinafter referred to as E.p.c.

apply to counterfeiting of money in circulation abroad, bank cards and other legal tenders as well as securities, treasury marks and signs of the State Inspectorate. The analysis is required for the interpretative rule resulting from § 333[1] sec. 3 of the E.p.c. The regulations on currency protection contained in Section 1 apply regardless of whether the object of the executive action is a currency put into circulation or not yet in circulation, but intended for circulation and use as a legal tender (item 1); or whether the counterfeiting occurred illegally, or as a result of breaching the conditions constituting the basis for the issue of monetary tokens (item 2).

The above remark allows us to start analyzing the types of crimes against the authenticity and credibility of money or its surrogates. Attention should be paid to the act defined in § 333 sec. 1 of the E.p.c. Pursuant to the above provision, counterfeiting of a bank card or other legal tenders (including electronic money) or counterfeiting a security is punishable.[298] The implementation of the characteristics of the above offence was penalized under the threat of a financial penalty[299] or imprisonment for up to three years.[300] The provision is applicable provided that the elements of the type under § 333[1] of the E.p.c. are not implemented, thus, constituting a manifestation of statutory subsidiarity.[301]

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[298] Prohibited acts are divided into first and second degree offences (§ 4 sec. 1 of the E.p.c.). First-degree offences are types where the upper limit of the statutory threat is a sentence of imprisonment for more than five years or a life imprisonment (both for natural persons and collective entities). The offences of the second degree are prohibited acts, where the sanction is a penalty of imprisonment of less than five years or a fine (§ 4 sec. 2 and 3 of the E.p.c.).

[299] The penalty of a fine is imposed on the basis of § 44 of the E.p.c. in the amount of thirty to five hundred daily rates (sec. 1). Their amount is calculated on the basis of the average daily income of the perpetrator. Due to exceptional circumstances, the value may be increased or decreased, taking into account the perpetrator's standard of living. The lower limit of a daily rate is not less than ten euros (sec. 2). It is worth noting how the court determines the basis for setting the amount of the fine. The average daily income of the perpetrator is calculated on the basis of income subject to income tax for the year preceding the year in which the criminal proceedings against that person were initiated (sec. 3). A pecuniary penalty may be imposed on natural persons as an additional sanction, adjudged in addition to a custodial sentence. In relation to legal persons, the fine ranges from four to sixteen thousand euros (sec. 6 and 8). A reservation should be made regarding a different method of determining the amount of a financial penalty adjudged against collective entities. Its amount depends on the percentage of turnover that the legal person obtained in the financial year immediately preceding the year in which the criminal proceedings were initiated (sec. 9).

[300] Pursuant to § 45 sec. 1 of the E.p.c., a sentence of imprisonment is adjudged from thirty days to twenty years or as a penalty of life imprisonment. In the case of a perpetrator, who was under eighteen years of age at the time of the act, no sentence of imprisonment exceeding ten years may be imposed.

[301] It is worth noting that § 333[1] of the E.p.c. regulates criminal introduction of a fake currency or its surrogate into circulation. Putting an inauthentic value into circulation is a "target"

It is worth paying attention to the elements that modify the counterfeiting of other means. Those implying a more severe penalty should be distinguished (§ 333 sec. 2 item 1 or 2 of the E.p.c.). In both cases, the threat of imprisonment from one year to six years is motivated by the implementation of an offence for at least a second time (item 1) or on a large scale (item 2). As part of the statutory threat, pursuant to § 333 sec. 5 of the E.p.c., an extended confiscation order[302] is allowed.

Regulation of the criminal liability of collective entities for committing a counterfeiting of other legal tenders also requires signalling.[303] This issue was regulated in § 333 sec. 3 of the E.p.c. In the event of committing offences under § 333 sec. 1 or 2 of the E.p.c., a legal person may be prosecuted. The consequence of prohibited act for a collective entity is a financial penalty.[304]

Another representative of the first category is the act typified in § 334^2 sec. 1 sentence 1 of the E.p.c. The norm contained therein criminalises the act of making, for commercial purposes, medals or tokens, as described in Council Regulation (EC) No. 2182/2004, with visual characteristics, approximate size, properties or similar composition to euro coins. In the event of the implementation of elements of this type, the perpetrator is subject to a fine not exceeding three hundred rates.[305]

Considerations on the types grouped in the second category should begin with the circulation of a monetary token under § 333^1 sec. 1 of the E.p.c. According to its

crime against the credibility of the circulating currency. Counterfeiting is only a way to achieve the goal intended by the perpetrator.

302 Pursuant to Art. 83^2 sec. 1 of the E.p.c., extended confiscation may be adjudged whenever a special provision enables it. It consists in seizing all or part of the property of the perpetrator of the offence, when at the time of adjudication it remains their property, and the nature of the offence, discrepancies between the legal income of that person and their financial situation, expenses and standard of living or other cause give rise to assumptions that this person has acquired possession of property in the result of the offence. The offender may provide evidence to the contrary by demonstrating the lawful acquisition or obtaining a lawful title to the property or rights that might be subjected to the seizure.

303 The conditions for liability of legal persons are specified in § 14 of the E.p.c. A collective entity is responsible for acts committed by its body, member of its body, its manager or a representative acting in the interest of that legal person. The liability of the collective entity depends on the explicit statement of the legislator, in the form of a special clause (sec. 1). An important reservation has also been made. The liability provided for in § 14 of the E.p.c. shall not apply to the State Treasury, international organizations, local government units and legal persons governed by public law (sec. 3).

304 A pecuniary penalty does not constitute an exclusive reaction against a legal person resulting from the fact that an offence has been committed. Additional penalties may also be imposed, i.e. deprivation of the right to process state secrets and classified information (§ 55 sec. 1 item 1 of the E.p.c.) or the prohibition of keeping animals (§ 55 sec. 1 item 2 of the E.p.c.).

305 In the event of a minor offence, the perpetrator may be charged with a fine in the amount of three to three hundred rates (§ 47 sec. 1 of the E.p.c.). The value of one rate is fixed, set at four euros.

content, whoever uses a counterfeit currency, is liable to prosecution. The sanction shall be a financial penalty or a custodial sentence for a period not exceeding eight years. In addition, in accordance with § 83^2 of the E.p.c., it is possible to order the extended forfeiture of property acquired by the perpetrator as a result of the crime. The legal basis for such a decision is § 333^1 sec. 4 of the E.p.c. Where the issue of perpetration of putting into circulation false monetary tokens, as referred to under § 333^1 sec. 1 of the E.p.c., by an entity that is a legal person, is addressed in § 333^1 sec. 2 of the E.p.c. The implementation of type elements by a collective entity was threatened with a financial penalty.

The other type included in this category is the offence under § 334 sec. 1 of the E.p.c. The causative act is the use, exchange, transfer or otherwise putting into circulation of counterfeit legal tender or the use of a counterfeit bank card or other legal tenders or a counterfeit security for the purpose of putting it into circulation. The Estonian legislator penalizes the implementation of elements of type under the threat of a financial penalty or imprisonment for up to five years. The sanctions are supplemented by an extended confiscation of property obtained as a result of the crime (§ 334 sec. 6 of the E.p.c.). Noteworthy are the types of aggravated release into circulation of counterfeit legal tender (§ 334 sec. 2 of the E.p.c.). A more severe penalty, i.e. the threat of imprisonment for two to ten years, should be associated with the occurrence of one of the modifying elements. They include cases when the offence was committed at least repeatedly (item 1) or when the offence takes on a large scale (item 2). The liability of legal persons for the implementation of the behaviour is also provided for (§ 334 sec. 3 of the E.p.c.), which is prohibited under the threat of a financial penalty. The last offence classified in the second category is the type from § 334^2 sec. 1 sentence 2 E.p.c. Pursuant to the above provision, whoever commercially sells or distributes medals or tokens described in Council Regulation (EC) No. 2182/2004 concerning medals and tokens similar to the euro, with visual characteristics, approximate size or similar properties to euro coins, shall be prosecuted. A fine of three hundred rates was envisaged for the commission of the act.

Within the third category, we should indicate the type from § 334 sec. 1 sentence 2 of the E.p.c., defining fencing of other legal tenders. The import, export or other handling of counterfeit legal tender undertaken for the purpose of putting them into circulation shall be subject to criminalisation. For breaking the norm, a fine or imprisonment for a period not exceeding five years is adjudged. In addition, on the basis of the principle provided for in § 83^2 of the E.p.c., extended confiscation may be applied to property obtained by way of the prohibited act (§ 334 sec. 6 of the E.p.c.). It is not surprising that there are types of aggravated fencing, where the modifying circumstance is at least a repeated offense (§ 334 sec. 2 item 1 of the E.p.c.) or the commission of the act on a large scale (§ 334 sec. 2 item 2 of the E.p.c.). The perpetration of the act was threatened with a penalty of two to ten years' imprison-

ment. Moreover, in the case of both basic and aggravated types, it is possible to hold a legal person criminally liable. The penalty provided for against a collective entity is a pecuniary penalty.

The last category should include *sui generis* preparation for counterfeiting. We are talking about § 340 sec. 1 of the E.p.c. To a significant extent, this provision sanctions the preparation for counterfeiting of money, bank cards, other legal tenders, securities, including the acquisition, preparation, adaptation or transfer of equipment, computer software, data or other means, including holograms or other means of protection against forgery, which are necessary for counterfeiting. From the point of view of the statutory threat, a financial penalty or imprisonment of up to two years is provided for. There is also a liability clause for legal persons, including a financial penalty.

5. Balkan Countries

A. Slovenia (Penal Code of 6 October 1994)[306]

Relevant provisions specifying prohibited acts constituting attacks on the authenticity of the circulating currency should be sought in the Special Part, Chapter 24 – "Crimes against the economy".

Offences under the Slovenian Penal Code should be divided into five categories. The first one includes acts consisting in counterfeiting of currency (Art. 243 sec. 2 of the Slo.p.c.), securities (Art. 244 sec. 2 sentence 1 of the Slo.p.c.) and other legal tenders (Art. 247 sec. 2 of the Slo.p.c.). The second framework includes removing the sign of redemption from a security (Art. 244 sec. 4 of the Slo.p.c.). The third category includes the types of circulation of imitations of currency (Art. 243 sec. 1 sentence 2 of the Slo.p.c.), securities (Art. 244 sec. 2 sentence 2 of the Slo.p.c.) or other legal tenders (Art. 247 sec. 1 sentence 2 of the Slo.p.c.). The fourth category includes the fencing of a counterfeit (Art. 243 sec. 2 of the Slo.p.c.). The last category is the preparation for counterfeiting (Art. 248 sec. 1 of the Slo.p.c.). The analysis of individual provisions will be completed by comments on a specific type under Art. 246 of the Slo.p.c., i.e. the abuse of a cheque and other legal tenders.

When initiating considerations on the types of counterfeiting, attention should be paid to Art. 243 sec. 1 sentence 1 of the Slo.p.c.[307] Pursuant to this provision,

[306] Kazenski zakonik Republike Slovenije, Uradni list RS 63-2167/1994 (source: https://zakonodaja.com/zakon/kz-1 [access: 1.12.2022]), hereinafter referred to as Slo.p.c.

[307] The offence constitutes unlawful human behaviour, which, due to the urgent protection of legal values, the law defines as prohibited acts under penalty of punishment, indicating its features and the penalty provided for against its perpetrator (Art. 16 sec. 1 of the Slo.p.c.).

whoever counterfeits or alters original money in order to put it into circulation as authentic, is liable to prosecution.[308] The offence was criminalised under penalty[309] of imprisonment for between six months and eight years.[310] It is worth paying attention to the type of modified money counterfeiting under Art. 243 sec. 3 of the Slo.p.c. An aggravating circumstance occurs when the causative action relates to a large amount or value of counterfeit monetary tokens. In the case of implementation of elements of this type, a sanction is provided for from one to ten years of imprisonment. Another offence belonging to the first category is the act under Art. 244 sec. 2 sentence 1 of the Slo.p.c. According to its content, anyone who counterfeits or converts securities for use as authentic or for release for use by another person, is liable to a sentence of one to eight years' imprisonment.[311] An aggravated type of securities counterfeit is also provided for (Art. 244 sec. 3 of the Slo.p.c.). The element implying a stricter decision on the penalty is the falsification of a large number of securities. The above act was prohibited under penalty of imprisonment for a period not shorter than one year and not exceeding ten years. The next representative of the first category is the type of *skimming* crime described in Art. 247 sec. 1 sentence 1 of the Slo.p.c. Pursuant to the said provision, whoever installs, in an ATM or a device used for card payment, an instrument to reproduce the record of a payment or credit card or to recognize it in payment transactions or who counterfeits such a card in any other way, is liable to prosecution. The falsification of other legal tenders under the Slovenian law was prohibited under the threat of imprisonment for up to five years. The second example of the criminalisation of skimming behaviour is the act typified in Art. 247 sec. 2 sentence 1 of the Slo.p.c. The provision provides for up to

[308] Pursuant to Art. 243 sec. 6 of the Slo.p.c., money is coins or banknotes that circulate in the territory of the Republic of Slovenia or in another country on the basis of legal provisions.

[309] The catalogue of sanctions is included in Art. 43 sec. 1 of the Slo.p.c. The consequences for the perpetrators of criminal offences are: imprisonment, a fine and a ban on driving motor vehicles. The first can only be imposed as a main penalty, while a fine can be both a main and an additional penalty (Art. 44 sec. 1 and 2 of the Slo.p.c.). A driving ban is only an additional penalty, imposed in addition to a fine or imprisonment with or without conditional suspension (Art. 44 sec. 3 of the Slo.p.c.).

[310] A custodial sentence is imposed for a period of not less than one month and may not exceed thirty years (Art. 46 sec. 1 of the Slo.p.c.). This is not a rule devoid of exceptions. In the case of the crime of genocide, crimes against humanity, war crimes and the crime of aggression, as well as on the basis of a cumulative penalty, it is permissible to adjudge a life imprisonment (Art. 46 sec. 2 of the Slo.p.c.). Pursuant to Art. 46 sec. 4 of the Slo.p.c., the incarceration penalty is imposed in months and years; in turn, as part of the imprisonment sentence of up to six months, also in days.

[311] Securities should be understood as treasury stamps, other securities issued and in circulation under the law in the Republic of Slovenia or abroad (Art. 244 sec. 6 of the Slo.p.c.). The juxtaposition of the above provision with the legal definition of money leads to a conclusion on ensuring the same protection of domestic or foreign monetary tokens and their surrogates.

five years' imprisonment for those, who counterfeit a payment or credit card with the assistance of technical devices used to identify such a card or other non-cash legal tender. Attention should be paid to the aggravated type of counterfeiting of other legal tenders (Art. 247 sec. 3 of the Slo.p.c.). If, as a result of the act described in Art. 247 sec. 1 sentence 1 of the Slo.p.c. or Art. 247 sec. 2 sentence 1 of the Slo.p.c., a significant financial benefit has been obtained, the perpetrator is liable to imprisonment for from one to eight years.

The second category distinguishes a special type of security altering, which is the removal of a sign of redemption. Pursuant to Art. 244 sec. 4 of the Slo.p.c., who removes the stamp by which the securities are destroyed or who otherwise seeks to restore legal force to the redeemed securities, is liable to prosecution. The implementation of signs of this type was threatened with a fine or imprisonment for a period not exceeding one year.[312]

The third category is initiated by the type from Art. 243 sec. 1 sentence 2 of the Slo.p.c. On its basis, whoever places the counterfeit or converted money on the market is liable to imprisonment for a period from six months to eight years. If the act involves a large amount or a large property value of counterfeit monetary token, the perpetrator is liable to imprisonment from one to ten years (Art. 243 sec. 3 of the Slo.p.c.). Attention should be paid to acts the causative action of which relates to securities. In this context, we will talk about Art. 244 sec. 2 sentence 2 of the Slo.p.c. A person who uses the counterfeit securities as authentic or obtains them for use as authentic, is liable to prosecution. The above act was penalized under the threat of imprisonment from one year to eight years. There is also a provision for aggravated type of release of false values into circulation. If the commission of the crime described in Art. 244 sec. 2 sentence 2 of the Slo.p.c. applies to a large number of inauthentic securities, the perpetrator is liable to imprisonment for a period not shorter than one year, but not longer than ten years (Art. 244 sec. 3 of the Slo.p.c.). Another example of the marketing of counterfeit securities is the act typified in Art. 247 sec. 1 sentence 2 of the Slo.p.c. Pursuant to the above provision, a person who uses a counterfeit or altered debit or credit card and obtains a financial benefit therefrom, shall be liable to imprisonment for a period not exceeding five years. The aggravating element is obtaining a significant financial

[312] Pursuant to Art. 47 sec. 1 of the Slo.p.c., a fine is adjudged by multiplying the number of daily rates with the amount of the daily rate determined by the court as matching the perpetrator's financial condition. The number of daily rates may not be less than ten or more than three hundred and sixty. We see an exception from this principle in the case of a fine for intentional crimes, where it is possible to adjudge up to one thousand five hundred rates (Art. 47 sec. 2 of the Slo.p.c.). The second stage of the fine is the determination of the amount of a single rate. The value of one rate is determined by the court according to the financial situation of the perpetrator, based on data on his earnings, other income, value of property, average cost of living and family obligations. However, it may not exceed one thousand euros (Art. 47 sec. 3 of the Slo.p.c.).

benefit by the perpetrator (Art. 247 sec. 3 of the Slo.p.c.). In this case, the criminal law sanction is imprisonment from one year to eight years.

The fourth category is the fencing of counterfeit monetary tokens. Pursuant to Art. 243 sec. 2 of the Slo.p.c., a person who acquires counterfeit or altered money in order to put into circulation as authentic, shall be held liable. This type was penalised with between six months and eight years in prison.

The last category includes *sui generis* preparation for the counterfeiting of currency and its surrogates (Art. 248 sec. 1 of the Slo.p.c.). The scope of the provision criminalises the production, storage, transfer, purchase, sale or entry into service of devices for counterfeiting money, securities or devices for copying a credit, debit or other type of card or other non-cash legal tender. Commission of its elements was threatened with a sentence of up to two years of imprisonment.

It is worth noting the type regulated by Art. 246 sec. 1 of the Slo.p.c. It is a specific equivalent of the Polish solution provided for in Art. 61 Pr.Czek.[313] On the basis of the above provision, liability shall be borne by a person who, in order to obtain a financial advantage, through the misuse of a cheque, credit or debit card or other non-cash legal tender, obliges the bank or other issuer – contrary to the agreement regarding the use of these means – to pay an amount that they know is not covered by the account balance. Transgressing the norm entails a consequence in the form of imprisonment for a period not exceeding two years. There are also two aggravated types, under which the severity of the penalty depends on the amount of the benefit obtained by the perpetrator. Pursuant to Art. 246 sec. 2 of the Slo.p.c., if by an act of sec. 1, a greater financial benefit has been achieved, the perpetrator is punishable by up to five years' imprisonment. If the benefit obtained is significant, a prison sentence of one to eight years is provided for (Art. 246 sec. 3 of the Slo.p.c.). It is also worth noting that the prosecution of an offence under Art. 246 sec. 1 of the Slo.p.c. is prosecuted upon complaint.

B. Croatia (Penal Act of 1 January 2020)[314]

Provisions typifying prohibited acts interfering with the uninterrupted trading of money and securities, as relevant to our considereations, can be found in the Special Part, Chapter 26 – "Criminal offences related to counterfeiting".

In the Croatian legal order, three categories of behaviours that undermine the credibility of circulating monetary tokens can be distinguished. The first one includes

[313] The Act of 28 April 1936 Cheque law (Polish Journal of Laws No. 37, item 283 as amended).

[314] Kazneni zakon, ročišćeni tekst zakona NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 na snazi od 01.01.2020 (source: https://zakonipropisi.com/hr/zakon/kazneni-zakon [access: 1.12.2022]), hereinafter referred to as Cr.p.c.

the crime of counterfeiting currency (Art. 274 sec. 1 sentence 1 of the Cr.p.c.) or securities (Art. 275 sec. 1 sentence 1 of the Cr.p.c.). Among the other, we should distinguish the circulation of counterfeit money (Art. 274 sec. 1 sentence 2 of the Cr.p.c.) or value (Art. 275 sec. 1 sentence 2 of the Cr.p.c.). The third is *sui generis* preparation for counterfeiting (Art. 283 sec. 1 of the Cr.p.c.).

The group of crimes classified in the first category is initiated by the act under Art. 274 sec. 1 sentence 1 of the Cr.p.c. Criminal liability is imposed on anyone who creates false money or alters real money or obtains it for the purpose of putting it into circulation as real money. The implementation of elements of the type was linked to a sanction[315] ranging from one to ten years' imprisonment.[316] It is also worth mentioning the type under Art. 275 sec. 1 sentence 1 of the Cr.p.c. This provision typifies the counterfeiting of securities. Whoever produces a counterfeit security issued on the basis of the law, or who alters a real security or obtains such a value is liable to prosecution. A prison sentence of one to ten years can be adjudged to the perpetrator of this type.

The second category groups offences consisting in circulating an inauthentic currency or its surrogate. In accordance with Art. 274 sec. 1 sentence 2 of the Cr.p.c. a person who puts into circulation as authentic counterfeit or altered money is liable to prosecution. The offence was prohibited under penalty of not less than one year and not exceeding ten years' imprisonment. If the object of direct action being put into circulation is a security, the conduct carries out the signs of an offence under Art. 275 sec. 1 sentence 1 of the Cr.p.c. Under penalty of one to ten years' imprisonment, this provision typifies the putting a counterfeit, altered or unlawfully issued security in circulation.

The last category includes the offence under Art. 283 sec. 1 of the Cr.p.c., constituting *sui generis* preparation for their counterfeiting. Who, among other things,

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[315] The catalogue of sanctions is included in Art. 40 of the Cr.p.c. Penalties include a fine, imprisonment and long-term imprisonment (sec. 1). The latter two should be treated as main penalty (sec. 3); and the fine may be both the main and additional penalty (sec. 2). In the case of crimes committed in order to obtain a financial benefit, it is permissible to impose a fine as an additional penalty even if it is not provided for under the statutory threat.

[316] Pursuant to Art. 44 sec. 1 of the Cr.p.c., the sentence of imprisonment may not be shorter than three months and may not exceed twenty years. If the sentence of imprisonment does not exceed six months, it shall be adjudged in full days or months. Above this period, it is measured in months and years (sec. 2). An isolation penalty exceeding six months is imposed when it can be assumed that a fine or community service cannot be imposed or their adjudgement would be unfounded from the point of view of the objectives of the penalty (Art. 45 sec. 1 of the Cr.p.c.). The long-term sentence of imprisonment is between twenty-one and forty years. In particularly justified cases, it is possible to impose a long-term prison sentence of up to fifty years (Art. 46 sec. 1 and 2 of the Cr.p.c.). It is not adjudged to perpetrators, who at the time of the act were not yet eighteen (sec. 4).

produces, acquires, possesses, sells or makes available for use means for the production of counterfeit money or securities, is liable to prosecution. The execution of the elements of this type was threatened with a penalty of up to three years' imprisonment.

C. Federation of Bosnia and Herzegovina (Criminal Law of Bosnia and Herzegovina of 1 March 2003)[317]

On the basis of the Bosnian criminal law, the provisions specifying the acts constituting attacks on the reliability and credibility of circulating money and its substitutes should be sought in the Special Part, Chapter Eighteen – "Crimes against the economy, market integrity and in the field of customs".

These crimes can be divided into three categories. The first one consists of counterfeiting of monetary tokens (Art. 205 sec. 1 sentence 1 of the BH.p.c.) or securities (Art. 206 sec. 1 sentence 1 of the BH.p.c.). The second includes acts consisting in the criminal marketing of a counterfeit or altered currency (Art. 205 sec. 1 sentence 2 of the BH.p.c.) or a security (Art. 206 sec. 1 sentence 2 of the BH.p.c.). The last category includes the fencing of counterfeit money (Art. 205 sec. 2 of the BH.p.c.). We will also analyse the question of applicability of criminal law concerning the venue.

As far as the application of the criminal law is concerned, the content of Art. 12 sec. 1 letter b of the BH.p.c. requires our analysis. The penal regulations of Bosnia and Herzegovina shall apply to anyone who commits the crime of counterfeiting domestic money or securities outside its territory, which has been described in Art. 205 to 208 of the BH.p.c. It should be noted that in accordance with Art. 12 sec. 1 letter c of the BH.o.c., the Bosnian law shall also apply to the perpetrator of the offence for which Bosnia and Herzegovina is obliged to prosecute under international treaties and agreements.

When initiating considerations on crimes of the first category, attention should be paid to Art. 205 sec. 1 sentence 1 of the BH.p.c. Those who counterfeit or alter genuine money in order to put it into circulation, are liable to prosecution.[318] The

[317] Krivični Zakon Bosne i Hercegovine (source: http://msb.gov.ba/anti_trafficking/zakonodavstvo/zakoni/?id=3868 [access: 1.12.2022]), hereinafter referred to as BH.p.c.

[318] The liability of both natural persons and collective entities is provided for. Among the latter, however, the State Treasury and the Brčko District of Bosnia and Herzegovina, cantons, cities, municipalities and local communities should be excluded (Art. 122 sec. 1 of the BH.p.c.). The prerequisites for the liability of legal persons are set out in Art. 124 BH.p.c. A collective entity can be held liable for an offence committed on its behalf, for its account or for its benefit where: the commission of the offence results from a request, instruction or authorisation by its management or supervisory bodies (letter a); its management or supervisory bodies have exercised a decisive influence over the offender or enabled him to commit the offence (letter b); the legal person dis-

implementation of elements of this type is sanctioned[319] with a penalty of one to ten years' imprisonment.[320] Increasing the lower limit of the statutory threat – from five to ten years' imprisonment – should be associated with the occurrence of an aggravating element in the form of a specific consequence caused by the perpetrator's behaviour. It is the disturbance of the economy of Bosnia and Herzegovina (Art. 205 sec. 3 of the BH.p.c.). The counterfeiting of securities is regulated in Art. 206 sec. 1 sentence 1 of the BH.p.c. According to its content, who, in order to put into circulation as original, counterfeits or alters authentic securities issued on the basis of a regulation issued by the authorized body of Bosnia and Herzegovina, is liable to prosecution. The analyzed act was penalized with imprisonment for a term of one to ten years. As in the case of counterfeit money, a modified type of prohibited act is provided for (Art. 206 sec. 2 of the BH.p.c.). The aggravating element is the fact that the economy of Bosnia and Herzegovina was disturbed as a result of the implementation of the type.

The second category includes individual types of release into circulation. What comes to the fore is the type from Art. 205 sec. 1 sentence 2 of the BH.p.c. On its basis, whoever places counterfeit or converted money on the market as authentic, is liable to a penalty of imprisonment from one to ten years. In turn, in Art. 205 sec.

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poses of an illegally obtained financial benefit or uses objects obtained as a result of the offence (letter c); its management or supervisory bodies have not exercised proper supervision over the legality of the conduct of employees (letter d). In relation to a collective entity, it is possible – in accordance with Art. 131 of the BH.p.c. – order the following types of sanctions: a fine (letter a), confiscation of property (letter b) or dissolution of the legal person (letter c). A fine imposed on a legal entity ranges from five thousand to five million Bosnian marks. If, by committing an offence, the legal person caused property damage to another entity or obtained an unlawful property benefit, the amount of the fine may be equal to twice this damage or benefit (Art. 132 sec. 1 and 2 of the BH.p.c.). Confiscation of property of a person under the law and its termination is referred to in Art. 134 of the BH.p.c. The most severe criminal reaction can be applied when the activity of a collective entity was used in whole or in part for the purpose of committing a crime (sec. 1). Cumulatively, adding to the dissolution of a legal person, it is permissible to order the confiscation of all or part of the property of that entity (sec. 2).

[319] Perpetrators – natural persons – may be punished under Art. 40 BH.p.c. Penalties include a custodial sentence (item a) and a fine (item b). In accordance with Art. 41 sec. 1 and 2 of the BH.p.c., the first of the aforementioned may serve only as the main penalty, while a fine may be both the main and additional one. As for prohibited acts committed with a desire for profit, a fine may be imposed in addition to imprisonment as an additional penalty, even if it is not provided for under the statutory threat (sec. 4).

[320] Pursuant to Art. 42 sec. 1 of the BH.p.c., the sentence of imprisonment shall not be less than thirty days or more than twenty years. In exceptional cases (the most serious crimes committed with intent), a long-term imprisonment can be imposed, i.e. from twenty to forty-five years (sec. 2). The sentence of imprisonment shall be adjudged in full months and years; however, imprisonment for a period not exceeding six months may be adjudged in full days. Long-term deprivation of liberty is only adjudged in full years (sec. 6). The application of this form of punishment is unacceptable to the perpetrator, who at the time of the act was under twenty-one years old.

2 of the BH.p.c., an aggravated type of counterfeit currency circulation is provided for. A stricter criminal response, since the threat of a penalty not lower than five years' imprisonment, is justified by the disturbance of Bosnia and Herzegovina's economy as a result of the act.

Attention should be paid to Art. 206 sec. 1 sentence 2 of the BH.p.c. Pursuant to that provision, a person who markets counterfeit or altered securities as authentic, is liable to prosecution. Implementation of the elements of this type was punishable by imprisonment for a period not exceeding five years. Moreover, the increased criminal repression – as in the case of the circulation of inauthentic monetary tokens – is motivated by a particular consequence of the perpetrator's behaviour, i.e. the disturbance of Bosnia and Herzegovina's economy. In that case, the offence shall be punishable by a term of imprisonment of not less than five years.

The last category consists of fencing fake monetary tokens, described in Art. 205 sec. 2 of the BH.p.c. According to its content, whoever acquires counterfeit or altered money in order to market it as authentic is liable to prosecution. From the point of view of the sanction, it uses a reference to Art. 205 sec. 1 of the BH.p.c. It is worth signaling the aggravating circumstance of the basic type (Art. 205 sec. 3 of the BH.p.c.). This is to cause a disturbance in the economy of Bosnia and Herzegovina as a result of the perpetrator's actions. The penalty provided for it is a custodial sentence of not less than five years.

D. Brčko District in Bosnia and Herzegovina (Criminal Law of 1 July 2003)[321]

Provisions that typify criminal acts in the Brčko District, which are relevant for further considerations, can be found in the Special Part, Chapter XXII – "Crimes against the economy, economic turnover and security of payments".

From a model point of view, four categories can be distinguished among these crimes. The first is the counterfeiting or altering of securities (Art. 250 sec. 1 sentence 1 of the Br.p.c.) or other legal tenders (Art. 251 sec. 1 sentence 1 of the Br.p.c.). As part of the second one, it is necessary to mention the fencing of inauthentic values (Art. 250 sec. 1 sentence 2 of the Br.p.c.). The third is the placing on the market of counterfeit legal tender (Art. 251 sec. 1 sentence 2 of the Br.p.c.). The last one includes preparation for the counterfeiting of currency, securities and other legal tenders (Art. 254 sec. 1 of the Br.p.c.).

We should signal the prohibited act described in Art. 250 sec. 1 sentence 1 of the Br.p.c. A person who, in order to be marketed as genuine, forges counterfeit or alters

[321] Krivični Zakon Brčko Distrikta Bosne i Hercegovine (source: https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html [access: 1.01.2021]), hereinafter referred to as Br.p.c.

genuine securities, is liable to prosecution. The implementation of the constituent elements of the offence[322] is punishable by a sanction[323] in the form of imprisonment for a term of one to ten years.[324] What is interesting is the offence under Art. 251 sec. 1 sentence 1 of the Br.p.c. Pursuant to that provision, a person who, in order to be used as authentic, makes or converts a counterfeit credit card or other non-cash payment card, is liable to prosecution. Under the statutory threat, a sentence of up to three years' imprisonment is provided. The aggravating element of the type is the occurrence of motivation aimed at achieving a financial benefit from the criminal practice.[325] In this case, the criminal response is imprisonment for a period from

[322] Liability of both natural and legal persons for the implementation of the signs of types of prohibited acts is provided for. As for the latter, the conditions for their liability are set out in Art. 128 sec. 1 letters a–d of the Br.p.c. It is indicated that an offence committed by the perpetrator on behalf of, for or in the interest of a legal person may be attributed to it when: the commission of a prohibited act results from a request, order or was made with the consent of the management or supervisory authorities of the collective entity (letter a); the same authorities as indicated in point a have influenced the offender or enabled them to commit the prohibited act (letter b); the collective entity disposes of an unlawfully obtained financial benefit or uses objects resulting from the offence (letter c); the bodies of the legal person did not supervise the correctness of the work of the subordinate employee who is the perpetrator (letter d). The catalogue of consequences for collective entities is included in Art. 135 of the Br.p.c. These include fines (letter a), confiscation (letter b) liquidation of the legal person (letter c). The fine may not be less than five thousand or more than five million Bosnian marks (Art. 136 sec. 1 of the Br.p.c.). When an unlawful advantage has been obtained from the offence attributed to the collective entity or the injured party has suffered damage, the amount of the fine may be up to twice this benefit or damage (Art. 136 sec. 2 of the Br.p.c.). A confiscation may be imposed on a legal person when the offence committed is punishable by a sentence of at least five years' imprisonment (Art. 137 sec. 1 of the Br.p.c.). All assets of the collective entity, its part and individual components may be subject to confiscation. The dissolution of a legal person can be adjudged when the activity of a collective entity was used in whole or for the most part to commit crimes (Art. 138 sec. 1 of the Br.p.c.)

[323] Pursuant to Art. 41 sec. 1 of the Br.p.c., the following types sanctions can be adjudged to a perpetrator, who is a natural person: imprisonment (letter a); long-term imprisonment (letter b) or a fine (letter c). The penalty of imprisonment (in both forms) can only be adjudged as the main penalty. The fine may serve as both a main and an additional penalty (sec. 2 and 3). In the case of an offence committed in order to obtain a financial benefit, a fine may also be imposed if such sanctions are not provided for under the statutory threat (sec. 5).

[324] Pursuant to Art. 43 sec. 1 of the Br.p.c., a sentence of imprisonment is imposed for from thirty days to twenty years. It is measured in months and years, but in the case of isolation up to six months, also in days (sec. 2).

[325] Pursuant to Art. 2 sec. 24 of the Br.p.c., material benefit should be understood as any economic good that stems directly or indirectly from a crime. Obtaining a property benefit in the result of the commission of the type is associated with the issue of its forfeiture. Attention should be paid to Art. 114a of the Br.p.c., constituting *lex specialis* in relation to Art. 114 of the Br.p.c. If criminal proceedings are conducted in the case of an offence under Chapter XXII, the court may declare forfeiture of a financial benefit in respect of which the prosecutor has presented suf-

one year to five years. If the offender managed to achieve a benefit, its size will determine both the legal qualification of the attributed act and the penalty. When, as a result of an offence under Art. 251 sec. 1 sentence 1 of the Br.p.c., a financial benefit exceeding ten thousand Bosnian marks has been achieved, the perpetrator is punishable by a sentence of one to eight years' imprisonment (Art. 251 sec. 3 of the Br.p.c.). If the aforementioned financial benefit exceeds fifty thousand Bosnian marks, the perpetrator is punished with a prison sentence of two to ten years (Art. 251 sec. 4 of the Br.p.c.). When initiating considerations devoted to the fencing of false values, we should point to Art. 250 sec. 1 sentence 2 of the Br.p.c. Whoever acquires counterfeit or converted securities in order to be marketed as authentic, shall be held liable. The penalty for it is imprisonment for a term of one to ten years.

The case of putting into circulation inauthentic legal tender is criminalised by Art. 251 sec. 1 sentence 2 of the Br.p.c. Under this provision, whoever uses a counterfeit or converted ATM card or other non-cash payment card as an authentic one, is liable to prosecution. Breaking the norm involves a penalty in the form of imprisonment for a period not exceeding three years. As in the case of counterfeiting of other legal tenders, the motivation aimed at obtaining a financial advantage or achieving it in a specific size, gives rise to consequences related to a stricter penalty. If the perpetrator is guided by the goal of achieving an unlawful advantage, the subjective side thus shaped should be associated with the threat of imprisonment for a period from one to five years (Art. 251 sec. 2 of the Br.p.c.). Obtaining a benefit exceeding ten thousand Bosnian marks by the perpetrator was threatened with a penalty of not less than one year and not longer than eight years' imprisonment (Art. 251 sec. 3 of the Br.p.c.). When the benefit obtained exceeds fifty thousand Bosnian marks, the sanction of two to ten years' imprisonment is provided for (Art. 251 sec. 4 of the Br.p.c.).

The last category includes preparatory activities for the counterfeiting of monetary tokens or their surrogates. Pursuant to Art. 254 sec. 1 of the Br.p.c., whoever manufactures, acquires, possesses or makes available for use means for the production of counterfeit money,[326] credit cards or other non-cash payment carts or counterfeit or converted securities, is liable to prosecution. The implementation of elements of the type was threatened with a sanction in the form of a sentence of six months to five years' imprisonment.

ficient evidence to justify the assumption that this benefit was obtained from committing crimes, and the perpetrator failed to present proof to the contrary. This is a detailing of Art. 114 sec. 2 of the Br.p.c., which provides that the forfeiture of benefits, income or other profits from the crime occurs on the basis of a court decision finding the commission of a prohibited act under penalty of punishment.

[326] Money shall be understood as metal or paper legal tender that are in circulation in Bosnia and Herzegovina or abroad on the basis of provisions of law (Art. 2 sec. 29 of the Br.p.c.).

E. Kosovo (Penal Code of the Republic of Kosovo of 13 July 2012)[327]

Provisions relevant for our further considerations of the provisions typifying offences should be sought in the Special Part, Chapter XXV – "Offences against the economy".

Crimes that interfere with the undisturbed trading of money and securities should be divided into four categories. The first one includes counterfeiting or alteration of monetary tokens (Art. 302 sec. 1 of the K.p.c.) and securities and other legal tenders (Art. 293 sec. 1 sentence 1 of the K.p.c. in connection with Art. 293 sec. 8 of the K.p.c.). The second is the circulation of counterfeit money (Art. 302 sec. 2 sentence 1 of the K.p.c.), securities (Art. 293 sec. 1 sentence 2 of the K.p.c.) or other legal tenders (Art. 293 sec. 2 sentence 1 of the K.p.c.). The third category covers fencing of inauthentic currency (Art. 302 sec. 2 sentence 2 of the K.p.c.) or payment instruments (Art. 293 sec. 2 sentence 2 of the K.p.c.). The last includes preparations for counterfeiting money, assets and payment instruments (Art. 304 sec. 1 of the K.p.c.). The subject of the analyzes was the issue of a specific type of putting a check into circulation (Art. 307 of the K.p.c.), constituting a "means to achieve the goal" in the form of fraud.

When proceeding to the considerations, it is necessary to indicate the act under Art. 302 sec. 1 of the K.p.c. According to its content, a person who,[328] in order to put into circulation as authentic, produces false money, is subject to criminal liability.[329] Under the statutory threat, a prison sentence[330] of one to ten years is provided for.[324] What requires is that the number/value of counterfeits obtained by the perpetrator affects the severity of the sanction provided for under the typing provision. The

[327] Kodi Penal i Republikës Së Kosovës Kodi Nr. 06/L-074 23 nëntor 2018 Shpallur me dekretin Nr. DL-065-2018, datë 13.17.2012 (source: https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413 [access: 1.01.2021]), hereinafter referred to as K.p.c.

[328] Liability of both individuals and collective entities is foreseen. The prerequisites for liability are included in Art. 40 of the K.p.c. A legal person is responsible for a prohibited act committed by a person who, in order to obtain benefits and within the granted authorisations, acted on its behalf or caused damage (sec. 1). The liability of a legal person is fully independent of the fault and guilt of the subject acting on its behalf. The above premise is updated even when prosecution and judgement of the perpetrator's direct act is excluded (sec. 2). Therefore, the principle of liability of a collective entity should be sought in perpetration by natural person (sec. 3), thus, excluding the complete independence of liability.

[329] Money is coins and banknotes that are lawfully in circulation in the Republic of Kosovo or in any other jurisdiction (Art. 120 sec. 9 of the K.p.c.).

[330] The catalogue of sanctions is contained in Art. 42 of the K.p.c. It lists: main penalties (sec. 1); substitute penalties (sec. 2) and additional penalties (sec. 3). For our further considerations, it is important to list the main penalties (Art. 43 of the K.p.c.). These include: life imprisonment (sec. 1), term deprivation of liberty (sec. 2) and a fine (sec. 3).

aggravating circumstance will occur when the offence described in Art. 302 sec. 1 of the K.p.c. concerns the counterfeiting of money in the total amount in excess of one hundred thousand euros (Art. 302 sec. 5 of the K.p.c.). In this case, the perpetrator faces a sentence of not less than three years' imprisonment.[331] Next, attention should be paid to the type under Art. 293 sec. 1 sentence 1 of the K.p.c. Its normative scope covers whoever counterfeits securities[332] or payment instruments[333] in order to use them as authentic. The execution of the elements of the act was threatened with a sentence of six months to five years' imprisonment. It is worth paying attention to the modified types of offences. In the first case, the denomination of the counterfeit securities or payment instruments constitutes the aggravating circumstance of the type. In accordance with Art. 293 sec. 4 of the K.p.c., a penalty from one to eight years' imprisonment is adjudged to a perpetrator who commits a falsification of the mentioned values, the value of which exceeds ten thousand euros. We should consider the mitigated form under Art. 293 sec. 5 of the K.p.c. as curiosity, where the subjective party constitutes the element reducing the penalisation. If the perpetrator has in good faith forged securities or payment instruments and then used them in trading, knowing that they are counterfeit, they shall be punished with a fine or imprisonment for no more than a year.[334] It is also worth paying attention to the criminalisation of attempts of the above type (Art. 293 sec. 6 of the K.p.c.).[335]

[331] Pursuant to Art. 45 sec. 1 of the K.p.c., a sentence of imprisonment is adjudged for from thirty days to twenty-five years. It is adjudicated in months and years, although if it does not exceed six months, it is also adjudicated in days (sec. 2).

[332] "Payment instrument" means a physical instrument, other than money, which, because of its specific nature, enables its holder or user, by virtue of its specific nature, alone or in combination with any other payment instrument, to transfer money or monetary values (Art. 293 sec. 8 of the K.p.c.). The definition, without limitation to such elements, indicates: stocks, certificates of participation, shares, credit cards, control cards, other cards issued by financial institutions, cheques, traveller's cheques or currency banknotes which are protected against counterfeiting or altering by design, coding, signature or other necessary measures.

[333] A "counterfeit security or payment instrument" includes securities or payment instruments produced or original securities or payment instruments the content of which has been altered (Art. 293 sec. 9 of the K.p.c.).

[334] Pursuant to Art. 46 sec. 1 of the K.p.c., a fine may not be less than one hundred euros. When specifying a financial penalty in the text of the provision, it is sufficient to indicate the lower limit. However, this principle is not without exceptions. In the case of acts related to terrorism, trafficking, organised crime or crimes committed for the purpose of obtaining a financial gain, the amount of the fine may not exceed twenty-five thousand euros. In these cases, the principle is reversed and the upper limit of statutory threat is indicated.

[335] Anyone who intentionally takes action to commit an offence that does not occur or the character of which has not been implemented is considered to have attempted to commit the prohibited act (Art. 28 sec. 1 of the K.p.c.). The scope of penalisation of the attempt is specified in Art. 28 sec. 2 of the K.p.c. The attempt to commit a crime for which there is a penalty for three

The second category is opened by the type of criminal introduction into circulation of false monetary tokens pursuant to Art. 302 sec. 2 sentence 1 of the K.p.c. Anyone who introduces into circulation, accepts or uses counterfeit money, knowing that it is not genuine, is subject to criminal liability. Under the statutory threat, a sentence of one to eight years' imprisonment is provided for. It is worth noting that the circumstance modifying (both mitigating and aggravating) this type is the nominal value of counterfeits that have been put into circulation. If the perpetrator accepts counterfeit or processed money with a nominal value of not more than fifty euros and then uses it in trade knowing the lack of its authenticity, they are subject to a fine or imprisonment for up to a year (Art. 302 sec. 3 of the K.p.c.). In the above case, the lenient penalty is also supported by the trait of the subject party, i.e. good faith of the one introducing the counterfeit in circulation. When the crime concerns imitations with a total denomination exceeding one hundred thousand euros, the perpetrator faces a prison sentence of not less than three years (Art. 302 sec. 5 of the K.p.c.). Another act, consisting in the marketing of certain values, was typified in Art. 293 sec. 1 sentence 2 of the K.p.c. Whoever gives another person for use or uses in trading as authentic, counterfeit or altered securities or payment instruments, shall be held liable. Breaking this norm is punishable by imprisonment for a period from six months to five years.

Attention should be paid to the marketing of counterfeit payment instruments. The elements of this type are characterized in Art. 293 sec. 2 sentence 1 of the K.p.c. On the basis of the above provision, who, in order to market as authentic, knowing that securities or payment instruments are counterfeit or altered, accepts, uses or otherwise puts them into circulation is liable to prosecution. The implementation of the elements of this type was penalized under the threat of imprisonment for a period not shorter than three months and not exceeding three years. In relation to Art. 293 sec. 1 sentence 2 of the K.p.c., as well as to Art. 293 sec. 2 sentence 1 of the K.p.c., a circumstance aggravating these types was also provided for. If the offences include securities or payment instruments with a nominal value exceeding ten thousand euros, the perpetrator may be punished with a penalty of one to eight years' imprisonment (Art. 293 sec. 4 of the K.p.c.).

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years' imprisonment or more is punishable (always). The criminal offence of attempting another offence only takes place if this is provided for by law. The perpetrator of an attempt is punished according to the sanction provided for the respective given crime, although the sanction can be exceptionally mitigated (Art. 28 sec. 3 of the K.p.c.). Pursuant to Art. 29 of the K.p.c., the court may exempt from punishment an offender who attempted to commit a prohibited act with an inappropriate object or in relation to an inappropriate object. It is worth paying attention to the issue of active repentance under Art. 30 of the K.p.c. A perpetrator who voluntarily resigned from committing a prohibited act may be released of liability. The regulation is complemented by an indication that the perpetrator is either to be aware of the possibility of continuing the causative action, or is to prevent the occurrence of the effect (sec. 1).

In the context of crimes of the third category, it is necessary to mention the act typified in Art. 302 sec. 2 sentence 2 of the K.p.c. According to its content, the conduct consists in the fact that the perpetrator, in order to put into circulation, knowing that the monetary tokens are counterfeit or altered, receives, transports or possesses them. Non-compliance with the prohibition norm was linked to a sanction in the form of imprisonment for from one to eight years. Also in this case the aggravating element is the implementation of the activity in relation to the object of direct action with a specified nominal value. If the act concerns a counterfeit or altered currency in an amount exceeding one hundred thousand euros, the perpetrator is to be subjected to imprisonment for not less than three years (Art. 302 sec. 5 of the K.p.c.).

Fencing counterfeited securities and payment instruments is dealt with in Art. 293 sec. 2 sentence 2 of the K.p.c. The norm interpreted from the above provision covers whoever, in order to be marketed as authentic and knowing that these values are counterfeited or reworked, receives, transports or possesses them. Under the statutory threat, a sanction of three months to three years' imprisonment is provided. A circumstance affecting a more severe criminal response is the implementation of a causative action in relation to securities or payment instruments with a nominal value in excess of ten thousand euros (Art. 293 sec. 4 of the K.p.c.). In this case, the offender can be sentenced to between one and eight years' imprisonment.

What requires our reflection is Art. 304 sec. 1 of the K.p.c. It criminalises the manufacture, supply, sale, receipt, possession or use of tools for counterfeiting or altering monetary tokens, securities or payment instruments (counterfeiting tools).[336] The above act was penalized with one to five years' imprisonment.

Supplementing the protection of securities and other legal tenders is a type under Art. 307 sec. 1 of the K.p.c. It is both a kind of circulation of inauthentic values or surrogates of money that are not covered, as well as a means to achieve the goal "on the way" to fraud intended by the perpetrator. A person who, in order to unlawfully obtain for themselves or another person a financial benefit, gives or puts into circulation a cheque without cover or a counterfeit or altered cheque or credit card and thus obtains a financial benefit is liable to prosecution. The execution of elements of this type was prohibited under the threat of a fine or imprisonment for up to three years. In addition, a fine or imprisonment of up to three years is imposed on an offender who, without authorization, uses a credit card, bank card or cheque to withdraw cash in order to unlawfully obtain a financial benefit for themselves or another person, knowing that such a payment is not covered by an account balance

[336] A "counterfeiting tool" is understood as instruments, articles, computer software and other tools that have been specially adapted to counterfeit or alter money, securities or payment instruments or their components, which serve to protect them against fraud (Art. 304 sec. 3 of the K.p.c.).

or permitted debit or uses the above-mentioned funds, even though they know that at the time of payment they will not be able to repay the debt (Art. 307 sec. 2 of the K.p.c.). For both offences, an aggravated type is also provided for. The modifying element is the amount of the financial benefit obtained by the perpetrator. If the consequence of the offences under Art. 307 sec. 1 of the K.p.c. or Art. 307 (2) of the K.p.c. is to obtain a material benefit, the value of which exceeds five thousand euros, the perpetrator faces a penalty of six months to five years' imprisonment.

F. Serbia (Penal Code of 1 January 2006)[337]

Provisions characterizing prohibited acts interfering with the monetary order of the state, the turnover and credibility of money should be sought in the Special Part, Chapter 22 – "Crimes against economic turnover". From the point of view of the systematisation of these offences, they can be classified into the following categories. The first consists of crimes consisting in counterfeiting or altering money (Art. 241 sec. 1 of the Se.p.c.), securities (Art. 242 sec. 1 sentence 1 of the Se.p.c.) or other legal tenders (Art. 243 sec. 1 sentence 1 of the Se.p.c.). The second may include the types of marketing of imitations of values (Art. 242 sec. 1 sentence 2 of the Se.p.c.) or other legal tenders (Art. 243 sec. 1 sentence 2 of the Se.p.c.). Within the third category, we distinguish the fencing of monetary tokens (Art. 241 sec. 2 and Art. 242 sec. 1 sentence 3 of the Se.p.c.) or other legal tenders (Art. 243 sec. 5 of the Se.p.c.). The last category includes preparation for counterfeiting money or securities (Art. 244b sec. 1 of the Se.p.c.) or other legal tenders (Art. 244b sec. 2 of the Se.p.c.).

When signalling the first of the topics, it is necessary to indicate Art. 7 of the Se.p.c., which regulates the applicability of the penal law as to the venue. Pursuant to this provision – to the extent relevant for our considerations – the criminal legislation of the Republic of Serbia is binding on anyone who commits an offence referred to in Art. 241 if the counterfeit concerns domestic money. Limiting the application of the criminal law to acts committed abroad only to cases of attacks on the domestic currency has significant repercussions. In particular, this concerns the issue of interference with the authenticity of foreign currencies and the euro.

When referring to crimes of the first category, the type from Art. 241 sec. 1 of the Se.p.c. should be analysed. It states that a person who, in order to be marketed as authentic, produces counterfeit money or alters authentic money for the same purpose, is liable to prosecution.[338] The implementation of the elements was sanctioned

[337] Krivičcni Zakonik (source: https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html [access: 1.12.2022]), hereinafter referred to as Se.p.c.

[338] Money shall be understood as money of metal, paper or other material that is in circulation under the law in Serbia or in another country (Art. 112 sec. 23 of the Se.p.c.).

in the form of a cumulative penalty[339] of a fine[340] and imprisonment for two to twelve years.[341] A modified type of falsification of monetary tokens was also provided. The aggravating element is the value of counterfeit or altered imitations (Art. 241 sec. 3 of

[339] The catalogue of sanctions is included in Art. 43 of the Se.p.c. The following penalties were indicated: life imprisonment (item 1); imprisonment (item 2); fines (item 3); work in the public interest (item 4) or revoking of a driving licence (item 5). The penalties should be divided into main and additional sanctions. The first – in accordance with Art. 44 sec. 1 of the Se.p.c. – are the penalties of life imprisonment or term imprisonment. In turn, a fine, work in the public interest and the revoking of the driving licence may be imposed both as the main penalty and an additional penalty (Art. 44 sec. 2 of the Se.p.c.).

[340] A fine may be adjudged either in daily rates or in a specific amount (Art. 48 sec. 1 of the Se.p.c.). In the case of crimes committed "out of greed", a fine may be imposed as an additional penalty even if it is not provided for under the statutory threat (Art. 48 sec. 2 of the Se.p.c.). The fine in the daily rates is regulated in Art. 49 of the Se.p.c. This form of fine is adjudged in two stages. First, the number of daily rates is determined, and then the amount of one rate (sec. 1). The number of rates may not be less than ten or more than three hundred and sixty (sec. 2). The amount of one rate is determined by dividing the difference between the perpetrator's income and their necessary expenses in the previous calendar year by the number of days in the year. One daily rate may not be lower than five hundred Serbian dinars and higher than fifty thousand dinars (sec. 3). If it proves impossible to obtain data on the perpetrator's income and expenses or when they do not achieve any income, the court determines the amount of the daily rate on the basis of the available data (sec. 5). The number of daily rates of fines (sec. 6) shall be fixed at the following intervals: up to sixty daily rates for offences punishable by a sentence of up to three months of imprisonment (item 1); from thirty to one hundred and twenty daily rates for offences punishable by a sentence of up to six months imprisonment (item 2); from sixty to one hundred and eighty daily rates for offences punishable by a sentence of up to one year imprisonment (item 3); from one hundred and twenty to two hundred and forty daily rates for offences punishable by a sentence of up to two years imprisonment (item 4); at least one hundred and eighty daily rates for offences punishable by a sentence of up to three years imprisonment (item 5). The fixed sum fine is defined in Art. 50 of the Se.p.c. It is of a subsidiary nature in relation to the fine imposed in the daily rate system. If it proves impossible to determine the amount of the daily rate on the basis of a free assessment of the court or obtaining information about the perpetrator's income and expenses would significantly prolong criminal proceedings, the court imposes a fine in a fixed amount (sec. 1). The fixed amount fine shall not be less than ten thousand Serbian dinars and shall not exceed one million Serbian dinars. In the case of crimes committed "out of greed", the fine may not exceed ten million dinars (sec. 2). The amount ranges of the fines were included in sec. 3. They shall amount to: up to one hundred thousand Serbian dinars for offences punishable by imprisonment of up to three months (item 1); from twenty thousand to two hundred thousand Serbian dinars for offences punishable by imprisonment of up to six months (item 2); from thirty thousand to three hundred thousand Serbian dinars for offences punishable by imprisonment of up to one year (item 3); from fifty thousand to five hundred thousand Serbian dinars for offences punishable by imprisonment of up to two years (item 4); at least one hundred thousand dinars for offences punishable by imprisonment of up to three years (item 5).

[341] Pursuant to Art. 45 sec. 1 of the Se.p.c., a sentence of imprisonment is imposed for from thirty days to twenty years. It is measured in full months or years. In the case of a sentence of up to six months' imprisonment also in days (sec. 2).

the Se.p.c.). If the face value of the counterfeit money exceeds one million five hundred thousand Serbian dinars – or the equivalent in another currency – the perpetrator faces a cumulative fine and imprisonment of five to fifteen years. Comments are required to the act typified in Art. 242 sec. 1 sentence 1 of the Se.p.c. According to its content, a person who intends to trade for themselves or someone else as authentic, produces false or reprocesses original securities is liable to prosecution. Breaking this norm was penalized under the threat of a cumulative fine and imprisonment for one to eight years. Also in this case, the nominal value of the manufactured counterfeits will entail a more severe criminal response (Art. 242 sec. 2 of the Se.p.c.). There is a cumulative threat of fine and imprisonment for between two and twelve years if the value of counterfeit or altered monetary tokens exceeds one million five hundred thousand Serbian dinars or their equivalent in another currency. The counterfeiting of other legal tenders is addressed in Art. 243 sec. 1 sentence 1 of the Se.p.c. Pursuant to the above provision, its scope covers anyone, who in order to use in the course of trade as the original, manufactures a counterfeits or alters an authentic payment card. The offence was prohibited under the threat of a cumulative fine and imprisonment for from six months to five years. The fact of acquiring a financial benefit and its amount are the aggravating elements of the type of counterfeiting of other legal tenders. If the perpetrator obtained a financial benefit using the card, it may give rise to liability under the threat of a cumulative fine and imprisonment for a period of not less than one year and not exceeding eight years (Art. 243 sec. 2 of the Se.p.c.).[342] When the value of the obtained financial benefit exceeds one million five hundred thousand Serbian dinars – or the equivalent of this amount in another currency – the perpetrator is subject to a cumulative fine and imprisonment for from two to twelve years (Art. 243 sec. 3 of the Se.p.c.).

When initiating considerations on the types of circulation of counterfeit currency or its surrogates, attention should be paid to the type under Art. 242 sec. 1 sentence 2 of the Se.p.c. It describes the criminal responsibility of those, who in order to be used as authentic, market counterfeit or altered securities. The implementation of the constituent elements of the act was penalized under the threat of a cumulative fine and imprisonment for not less than one year and not more than eight years. The aggravating element of the type of criminal release of counterfeits is their specific nominal value. If the total amount of marketed imitations of securities exceeds one million five hundred thousand Serbian dinars, the perpetrator is threatened with a cumulative penalty of a fine and imprisonment for from two to twelve years (Art. 242 sec. 2 of the Se.p.c.). The issue of putting fake legal tender into circulation is regulated in Art. 243 sec. 1 sentence 2 of the Se.p.c. Under this

[342] A financial advantage is understood as money, valuables and other benefits obtained from the prohibited act (Art. 92 sec. 1 of the Se.p.c.)

provision, the person who, in order to be used as authentic, places a counterfeit or altered payment card on the market, is liable to prosecution. Breaking this prohibition is punishable by a cumulative penalty of a fine and imprisonment from six months to five years. Also in the case of the analyzed type, the feature of obtaining a property benefit and its amount constitutes a circumstance modifying the crime. In the first case, prosecution under the threat of a cumulative penalty of a fine and imprisonment from one to eight years is justified when the offender obtains, using a card, an unlawful material benefit (Art. 242 sec. 2 of the Se.p.c.). On the other hand, the threat of a fine and imprisonment from two to twelve years is associated with the finding that the offender has obtained an unlawful financial advantage with a nominal value in excess of one million five hundred thousand Serbian dinars or its equivalent in another currency (Art. 243 sec. 3 of the Se.p.c.).

The analysis of crimes from the third category should begin with the type from Art. 241 sec. 2 of the Se.p.c. It criminalizes the acquisition of counterfeit or altered monetary tokens for the purpose of putting them into circulation as authentic. The offence was criminalised under the threat of a cumulative fine and imprisonment for between one and ten years. If the object of the act of fencing concerns the nominal value of counterfeits in excess of one million five hundred thousand Serbian dinars or the equivalent of this amount, this implies a stricter penalty (Art. 241 sec. 3 of the Se.p.c.). In such a case, the penal reaction is a cumulative sanction of a fine and imprisonment for a period of not less than five years and for a period not exceeding fifteen years.

The fencing of imitations of values is addressed in Art. 242 sec. 1 sentence 3 of the Se.p.c. On its basis who, for the purpose of trading as authentic, obtains counterfeit or reworked securities, is liable to prosecution. The implementation of elements of type is associated with the threat of a cumulative fine and imprisonment for a period of one to eight years. On the basis of securities fencing, the amount of the material benefit obtained is a type-modifying element (Art. 242 sec. 2 of the Se.p.c.). When the perpetrator, as a result of the prohibited act, achieved a financial benefit with a nominal value exceeding one million five hundred thousand Serbian dinars or its equivalent in another currency, they shall be punished by a cumulative fine and imprisonment from two to twelve years. Fencing of other legal tenders is addressed by Art. 243 sec. 5 of the Se.p.c. According to the aforementioned provision, whoever acquires a counterfeit or converted payment card for the purpose of trading as an authentic one is liable to prosecution. The mild approach of the Serbian legislator to the criminalisation of payment card fraud is puzzling, as the implementation of the type was threatened with a cumulative sanction of a fine and imprisonment for a period not exceeding three years.

The last category includes the preparation for counterfeiting monetary tokens and their surrogates. They were typified in two editorial units of the legal text, separately for currency and securities and for other legal tenders. Under the scope of Art.

244b sec. 1 of the Se.p.c. falls anyone, who manufactures, acquires, sells or transfers to another person for use the means used to create a counterfeit money or securities. In such a case, the perpetrator is subject to a cumulative fine and imprisonment for between six months and five years. In turn, pursuant to Art. 244b sec. 2 of the Se.p.c., liability shall be borne by whoever manufactures, acquires, sells or puts into service means for the production of imitation payment cards. The implementation of the elements of this type was threatened with a cumulative penalty of a fine and imprisonment for a period not exceeding three years.

G. Montenegro (Penal Code of Montenegro of 23 December 2003)[343]

Provisions that are relevant for the subject of the present work, typifying acts against the credibility of the circulating currency and its surrogates under the Criminal Code of Montenegro should be sought in the Special Part, Chapter 23 – "Crimes against payment transactions and business transactions".

The crimes analysed can be grouped into four categories. The first one consists of types consisting in counterfeiting money (Art. 258 sec. 1 of the M.p.c.), securities (Art. 259 sec. 1 sentence 1 of the M.p.c.) or other legal tenders (Art. 260 sec. 1 sentence 1 of the M.p.c.). The second category includes fencing counterfeit currency (Art. 258 sec. 2 sentence 1 of the M.p.c.) or legal tender (Art. 260 sec. 1 sentence 2 of the M.p.c.). As part of the third, it is necessary to distinguish the types of criminal marketing of imitation monetary tokens (Art. 258 sec. 2 sentence 2 of the M.p.c.), securities (Art. 259 sec. 1 sentence 2 of the M.p.c.) or other legal tenders (Art. 260 sec. 1 sentence 3 of the M.p.c.). The last one is the implementation of preparatory activities for the counterfeiting of money or its surrogates (Art. 262 sec. 1–3 of the M.p.c.).

Attention should be paid to Art. 258 sec. 1 of the M.p.c. According to its content, a person who, with the intention of putting into circulation as authentic, produces counterfeit or alters real money, is liable to prosecution.[344] In the case of the execution of elements of this type, the perpetrator is punishable[345] by imprisonment for

[343] Krivični Zakonik Crne Gore (source: https://www.paragraf.me/propisi-crnegore/krivicni-zakonik-crne-gore.html [access: 1.12.2022]), hereinafter referred to as M.p.c.

[344] Money is understood as money made of metal and paper or made of other materials, which is in circulation in Montenegro or in another country on the basis of the provisions of law (Art. 142 sec. 26 of the M.p.c.). Counterfeit or altered money is also considered to be money produced in a way and from materials like real money, but contrary to the provisions on its production (Art. 258 sec. 6 of the M.p.c.).

[345] The catalogue of penalties is included in Art. 33 items 1–4 of the M.p.c. The following are mentioned: long-term deprivation of liberty (item 1); term deprivation of liberty (item 2); fine (item 3) and works in the public interest (item 4). The above catalogue should be applied to

two to twelve years.[346] The aggravating element is the specified value of counterfeited or altered counterfeits (Art. 258 sec. 3 of the M.p.c.). If the total denomination exceeds the amount of fifteen thousand euros or its equivalent expressed in another currency, the perpetrator is punishable with five to fifteen years of imprisonment. Then, it is necessary to analyze the prohibited act under Art. 259 sec. 1 of the M.p.c. Pursuant to that provision, its scope covers whoever intending to trade as authentic or to pass on to another person for use, fabricates counterfeit or alters actual securities. Breaking this norm is punishable by imprisonment for a period from one year to five years. In the case of a value counterfeited, the total value of obtained imitations is the aggravating element of the type. If the nominal amount of counterfeit or altered securities exceeds three thousand euros, the perpetrator is subject to one to eight years' imprisonment (Art. 259 sec. 2 of the M.p.c.). When the total value of false values exceeds thirty thousand euros, the perpetrator is punished with two to ten years' imprisonment (Art. 259 sec. 3 of the M.p.c.).

The issue of counterfeiting other legal tenders is dealt with in Art. 260 sec. 1 sentence 1 of the M.p.c. According to its content, it is criminalised to make fake or alter authentic payment cards in order to use them in trading. From the point of view of the threat of punishment, the act was prohibited under the threat of imprisonment for up to three years. In the context of the types of modified counterfeit of other legal tenders, it is agreed that the achievement of a financial advantage by the perpetrator or its achievement in a certain amount constitutes the aggravating element. If the perpetrator, using a counterfeit or processed payment card, obtained an illegal financial benefit, they are liable to penalty of imprisonment from six months to five years (Art. 260 sec. 2 of the M.p.c.). The liability for aggravated types depends on the value of this benefit. When the perpetrator has reached it in the amount of more than three thousand euros, they are punishable by a sentence of one to eight years' imprisonment (Art. 260 sec. 3 of the M.p.c.). However, if the benefit exceeds thirty thousand euros, it is punishable by a penalty of two to ten years' imprisonment (Art. 260 sec. 4 of the M.p.c.).

Speaking of fencing imitation money, it is necessary to analyze Art. 258 sec. 2 sentence 1 of the M.p.c. Pursuant to that provision, a person who, with a view to marketing as authentic, acquires, stores or transmits counterfeit or reworked money marks, is liable to prosecution. The act was penalized under the threat of imprison-

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systematization taking into account the division of penalties into primary and minor ones. The former include long-term and term deprivation of liberty and the penalty of work for the public interest (Art. 34 sec. 1 of the M.p.c.). A fine may be imposed both as a primary penalty and a minor penalty (Art. 34 sec. 2 of the M.p.c.)

[346] A term imprisonment is imposed from thirty days to twenty years (Art. 36 sec. 1 of the M.p.c.). It is measured in full months or years. If the sentence does not exceed six months' imprisonment, its duration is in full days or months (Art. 36 sec. 2 of the M.p.c.)

ment from two to ten years. The nominal value of the object of the act is a modifying element. A stricter criminal response is warranted when the value of the monetary tokens being dealt with exceeds fifteen thousand euros, or the equivalent of this amount expressed in another currency. In this case, the perpetrator is punishable by a sentence of five to fifteen years' imprisonment (Art. 258 sec. 3 of the M.p.c.).

Pursuant to the contents of Art. 259 sec. 1 sentence 2 of the M.p.c., the criminalisation covers obtaining counterfeit or processed securities, with the intention of their use in trading as authentic or transferring them to another person for such use. The implementation of the elements of the type was punishable by imprisonment for a period from one to five years. Also in this case, the value of the obtained financial benefit aggravates this type of offense. If this value exceeds three thousand euros, the perpetrator is subject to a penalty of not less than one year and not more than eight years' imprisonment (Art. 259 sec. 2 of the M.p.c.). However, when the value exceeds thirty thousand euros, the threat of a penalty ranges from two to ten years' imprisonment (Art. 259 sec. 3 of the M.p.c.).

The last type included in the second category is the act described in Art. 260 sec. 1 sentence 2 of the M.p.c. On its basis, who purchases, stores or transfers a counterfeit or altered payment card or another payment card obtained without authorization for use is liable to prosecution. Breaking the prohibition norm was punishable by imprisonment for up to three years. An alternative finding of two circumstances determines the admissibility of the use of aggravated type of fencing of other legal tenders. These include obtaining by the perpetrator of a financial benefit from the criminal practice or achieving it in a certain amount. In the first case, the disposition of Art. 260 sec. 2 of the M.p.c. is updated, threatened with a penalty of six months to five years' imprisonment. On the other hand, the nominal value of the material benefit obtained by the perpetrator determines the application of two aggravated types. When this benefit exceeds three thousand euros, the perpetrator is punishable by one to eight years' imprisonment (Art. 260 sec. 3 of the M.p.c.). If it exceeds thirty thousand euros, the penalty is not less than two, and not more than ten years' imprisonment (Art. 260 sec. 4 of the M.p.c.).

In initiating the analysis of crimes grouped in the third category, one should point to the act under Art. 258 sec. 2 sentence 2 of the M.p.c. Pursuant to the said provision, who introduces counterfeit or altered monetary tokens into circulation, is liable to prosecution. In the case of the implementation of the elements of the act in question, the criminal reaction is imprisonment for two to ten years. The denomination of counterfeits of money in circulation determines whether the perpetrator is responsible for the implementation of the basic or aggravated type. If the value of the imitation exceeds fifteen thousand euros or the equivalent of this amount expressed in another currency, the perpetrator faces a penalty of five to fifteen years' imprisonment (Art. 258 sec. 3 of the M.p.c.).

Then, the act described in Art. 259 sec. 1 sentence 3 of the M.p.c. deserves our attention. On its basis, a person who uses counterfeit or forged securities in order to put them into circulation as genuine, is liable to prosecution. As part of the statutory threat, the act was penalized under the threat of imprisonment from one to five years. Also in the case of marketing imitations of values, their nominal value determines the recognition of the type as basic or modified. If the total value of the securities put into circulation exceeds three thousand euros, the perpetrator is liable to imprisonment for a period from one to eight years (Art. 259 sec. 2 of the M.p.c.). When their value exceeds thirty thousand euros, the aggravated type is punishable by imprisonment from two to ten years (Art. 259 sec. 3 of the M.p.c.). The closing type of the third category is the act under Art. 260 sec. 1 sentence 3 of the M.p.c. It provides that the use of a counterfeit or altered payment card, or of a third party payment card obtained without authorisation for use, for the purpose of placing it on the market is to be sanctioned. The offence was criminalised under penalty of imprisonment for a maximum period of three years. As in the case of the fencing of other legal tenders, so on the basis of putting it into circulation, the aggravating features of the type are: the perpetrator achieving a financial benefit or its specified amount. The threat of imprisonment from six months to five years is implied by the fact of obtaining an unlawful financial advantage (Art. 260 sec. 2 of the M.p.c.). Under the statutory threat, a penalty is provided – from one year to eight years in prison, provided that the perpetrator has obtained a financial benefit that exceeded the amount of three thousand euros from their criminal conduct (Art. 260 sec. 3 of the M.p.c.). If its value exceeds thirty thousand euros, the perpetrator faces a penalty of two to ten years' imprisonment (Art. 260 sec. 4 of the M.p.c.).

The considerations conclude with two forms of preparation for counterfeiting of currency, securities or other legal tenders under Art. 262 of the M.p.c. In the first case it criminalises the production, acquisition, sale, storage for use, or transfer to another person to use of means for the production of imitation money, payment cards or counterfeit securities (sec. 1). The implementation of elements of the type was threatened with a sanction of six months to five years of imprisonment. The second type of preparation is described in Art. 262 sec. 2 of the M.p.c.). According to its content, a person who produces, acquires, sells, stores for use, possesses or transmits to another person holograms or other components of money used to protect it from fraud is liable to prosecution. From the point of view of the statutory threat, a reference to the sanction provided for by the provision of Art. 262 sec. 1 of the M.p.c. is made.

H. Romania (Penal Code of 17 July 2009)[347]

Provisions specifying acts affecting the regularity of trading in money, securities and their surrogates can be found in Particular Part, Title VI – "Counterfeiting offences", Chapter I – "Counterfeiting of coins, stamps or other valuable objects".

Acts prohibited under the Romanian Penal Code can be classified into four categories. The first is the counterfeiting or altering of currency (Art. 310 sec. 1 and Art. 315 sec. 1 of the Ro.p.c.), securities (Art. 311 sec. 1 of the Ro.p.c.) or other legal tenders (Art. 311 sec. 2 of the Ro.p.c.). The second is the marketing of imitation of money (Art. 313 sec. 1 sentence 1 and Art. 315 sec. 2 sentence 1 of the Ro.p.c.) or its surrogates (Art. 313 sec. 2 and sec. 3 of the Ro.p.c.). As part of the third one, it is necessary to distinguish the fencing of monetary tokens, securities and other legal tenders (Art. 313 sec. 1 sentence 2 and sec. 2 and 315 sec. 2 sentence 2 of the Ro.p.c.). The last one should include criminal preparation for the falsification of the mentioned values (Art. 314 sec. 1 of the Ro.p.c. and sec. 2 of the Ro.p.c.).

The general provision applicable to all types grouped in four categories should be indicated first. We are talking about Art. 316 of the Ro.p.c. According to its content, the provisions of Chapter I shall also apply when the offence concerns coins, stamps, securities or payment instruments issued abroad. The interpretation of the norm contained therein leads to conclusions as to ensuring equal protection of both domestic and foreign currencies, securities or legal tender.

When initiating the analysis of crimes from the first category, it is necessary to indicate the act typified in Art. 310 sec. 1 Ro.p.c. On its basis, a person who counterfeits money of circulating value is liable to prosecution.[348] The implementation of the type elements is punishable by a cumulative sanction[349] of imprisonment from

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347 Codul Penal din 17 iulie 2009 (source: http://legislatie.just.ro/Public/DetaliiDocument/109855 [access: 1.12.2022]), hereinafter referred to as Ro.p.c.

348 Responsibility of both natural persons and collective entities for the performance of acts under the threat of punishment is provided for. The prerequisites for the liability of legal persons are included in Art. 135 of the Ro.p.c. A legal person – with the exception of the state and public authorities – bears criminal liability for crimes committed in the performance of an activity, in the interest of or for its benefit (sec. 1). The catalogue of penalties is included in Art. 136 sec. 1–3 of the Ro.p.c. They are divided into primary and additional. The first one is only a fine (sec. 1). The additional (sec. 2) include: dissolution of a legal person (letter a); suspension of the activity or one of the types of activity of a legal person ranging from 3 months to 3 years (letter b); prohibition of participation in a public procurements for a period from one to three years (letter e); publication of a conviction decision (letter f).

349 The catalogue of sanctions against perpetrators – natural persons – is included in Art. 53 letters a–c of the Ro.p.c. (primary penalties) and Art. 55 letters a–s of the Ro.p.c. (additional penalties). An additional penalty may also be imposed, i.e. a ban on the exercise of certain rights, from the moment the judgment becomes final, until the execution or recognition of the imprison-

three to ten[350] years and a ban on the exercise of certain rights.[351] The same penalty shall be imposed on any person who counterfeits money issued by the competent authorities before the official date of its introduction into circulation (Art. 310 sec. 2 of the Ro.p.c.). The attempt to commit the above crimes was also criminalized (Art. 310 sec. 3 of the Ro.p.c.).[352]

Attention should be paid to the crime of counterfeiting included in Art. 315 sec. 1 of the Ro.p.c. According to its content, a person who produces an authentic currency using equipment or materials intended for this purpose, in violation of the conditions set by the competent authorities or without their consent is liable to prosecution. Under the statutory threat, the threat of cumulative imprisonment of two to seven years and the prohibition of the exercise of certain rights is provided for. Also in this case, the attempted crime was criminalised (Art. 315 sec. 3 of the Ro.p.c.).

The issue of imitation securities is dealt with in Art. 311 sec. 1 of the Ro.p.c. Under this provision, counterfeiting of credit papers, securities or payment instruments or other counterfeit securities is sanctioned. The sanction is a cumulative sentence of two to seven years' imprisonment, together with a ban on the exercise of certain rights. If the object of the executive action is an electronic payment instrument, the perpetrator is subject to a cumulative penalty of three to ten years' imprisonment and a ban on the

ment sentence as executed (Art. 54 of the Ro.p.c.). The primary penalties include: life imprisonment (letter a); imprisonment (letter b) fine (letter c). Additional penalties include: prohibition of the exercise of certain rights (letter a); military rank degradation (letter b); publication of the judgment (letter c).

[350] A custodial sentence is imposed for a fixed period, from fifteen days to thirty years (Art. 60 of the Ro.p.c.).

[351] The penalty prohibiting the exercise of certain rights is the inability to use certain rights for a period from one to five years (Art. 66 sec. 1 of the Ro.p.c.). The rights that cannot be exercised by a convicted person include, among others: passive right to vote in elections of public authorities or to another public position (letter a); right to hold a position related to the exercise of public authority (letter b); active right to vote (letter d); parental authority (letter e); right to own and use weapons of any categories (letter h); right to drive vehicles of certain categories (letter i); right to stay in certain places or participate in certain sports, cultural or other public events (letter l).

[352] The attempt consists in the implementation of the intent to commit an offense, which, however, was interrupted or did not have the intended effect (Art. 32 sec. 1 of the Ro.p.c.). The offender is not attempting when the impossibility of committing the crime is a consequence of the way in which it was intended to be committed (Art. 32 sec. 2 of the Ro.p.c.). Attempts are punishable when the law provides so (Art. 33 sec. 1 of the Ro.p.c.). The legislator must support the criminalisation of attempted crime, in the form of a liability clause. Attempts shall be punished with the penalty provided for the offence in question, reduced by half. If the law provides for the threat of life imprisonment, the attempt of this offense is punishable by imprisonment for ten to twenty years (Art. 33 sec. 2 of the Ro.p.c.). It is worth noting the general clause of active repentance under Art. 34 s. 1 Ro.p.c. There is no penalty for a perpetrator who, prior to the disclosure of the act, withdrew from committing it or reported it to the competent authorities or prevented the crime by their own efforts.

exercise of certain rights (Art. 311 sec. 2 of the Ro.p.c.).[353] In both cases, the attempt of these crimes was penalised (Art. 311 sec. 3 of the Ro.p.c.).

The second category opens with an act under Art. 315 sec. 2 sentence 1 of the Ro.p.c. According to its wording, a person who introduces into circulation a currency produced with the use of devices or materials intended for this purpose, but in violation of the conditions set by the competent authorities or without their consent, is liable to prosecution. The implementation of elements of the type implies the threat of a penalty of two to seven years' imprisonment. In addition, the attempt to commit the offence is also subject to criminalisation (Art. 315 sec. 3 of the Ro.p.c.). The act under Art. 313 sec. 1 sentence 1 of the Ro.p.c. also requires our attention. It covers the putting into circulation of counterfeit or altered money, credit securities, securities, payment instruments or electronic payment instruments. As part of the sanctions, reference was made to the relevant provisions criminalizing the counterfeiting of individual values. A special type of release of counterfeits into circulation is included in Art. 313 sec. 2 of the Ro.p.c. The provision specifies an individual offence, the perpetrator of which may be a participant in the counterfeiting of monetary tokens, securities or other legal tenders. A provision referring to the kinds of individual types of counterfeiting was used. The seeming "re-introduction" of false values into the circulation is described in Art. 313 sec. 3 of the Ro.p.c. It sanctions the return to circulation of the object of direct action under Art. 310–312 of the Ro.p.c., by a person who, after taking possession of it, determined that it was inauthentic. In this case, the Romanian legislator has used a reference to the regulations that typify individual types of counterfeiting, with the proviso that the penalty limits are reduced by half. Criminalisation of each type of release into circulation also includes the attempt of these crimes (Art. 313 sec. 4 of the Ro.p.c.).

Coming to the analysis of acts involving imitation fencing, attention should be paid to the type under Art. 315 sec. 2 sentence 2 of the Ro.p.c. A person who, for the purpose of putting into circulation, receives, holds or transfers currency produced using equipment or materials intended for that purpose, but in breach of the conditions laid down by the competent authorities or without their consent, is liable to prosecution. From the point of view of the statutory threat, the act is sanctioned under the threat of a cumulative penalty of two to seven years' imprisonment and a ban on the exercise of certain rights. The attempt to commit this prohibited act is also punishable (Art. 315 sec. 3 of the Ro.p.c.). Fencing imitation of money and its surrogates is regulated in Art. 313 sec. 1 sentence 2 of the Ro.p.c. Who, in order to put into circulation, accepts, possesses or stores the values referred to in

[353] Electronic payment instrument means an instrument that allows the holder to make cash withdrawals, send and receive electronic money instruments and transfer funds other than those ordered and executed by financial institutions (Art. 180 of the Ro.p.c.).

Art. 310–312 of the Ro.p.c., is liable to prosecution. The problem of sanctions was regulated by a provision referring to the type of counterfeiting of individual objects of the executive action. In addition, the prosecution also covered the stage form of attempted crime (Art. 313 sec. 4 of the Ro.p.c.)

What requires our analysis when commenting on prohibited acts classified in the last category, is Art. 314 sec. 1 of the Ro.p.c. The regulation is the first form of preparation for counterfeiting. Pursuant to the aforementioned provision, whoever manufactures, receives, possesses or transfers tools or materials that are to serve to falsify the values indicated in Art. 310–312 of the Ro.p.c. is liable to prosecution. The said act was punishable by imprisonment for a term of one to five years. The second variant of preparation is characterized in Art. 314 sec. 2 of the Ro.p.c. On its basis, who manufactures, receives, owns or transfers hardware – including computer hardware or software – for the purpose of counterfeiting electronic payment instruments is liable to prosecution. Failure to comply with the prohibition norm implies the threat of imprisonment for a term of two to seven years.

I. Moldova (Penal Code of the Republic of Moldova of 18 April 2002)[354]

Prohibited acts that are relevant from the point of view of protecting the authenticity and regularity of economic transactions in terms of the circulation of money and its surrogates should be sought in the Special Part, Chapter X – "Economic Crimes".

The types can be grouped into two categories. The first includes the counterfeiting of monetary tokens or securities (Art. 236 sec. 1 sentence 1 of the Mol.p.c.) or other legal tenders (Art. 237 sec. 1 of the Mol.p.c.). The second group is the marketing of imitation money or values (Art. 236 sec. 1 sentence 2 of the Mol.p.c.).

When analyzing the acts belonging to the first class, it is necessary to indicate Art. 236 sec. 1 sentence 1 of the Mol.p.c.[355] The substantive scope of the act covers[356]

[354] Codul Penal Al. Republicii Moldova (source: https://www.legis.md/cautare/getResults?doc_id=122429&lang=ro [access: 1.12.2022]), hereinafter referred to as Mol.p.c.

[355] With reference to the aforementioned classes, a division of crimes is provided for, taking into account the degree of their reprehensibility. They are divided into offences: minor, less serious, serious, particularly serious and extremely serious (Art. 16 sec. 1 of the Mol.p.c.). Minor offences are acts for which a sentence of up to two years' imprisonment has been provided (Art. 16 sec. 2 of the Mol.p.c.). A less serious offence is a criminal offence punishable by up to five years' imprisonment (Art. 16 sec. 3 of the Mol.p.c.). Serious crimes are prohibited acts penalised with imprisonment for up to twelve years (Art. 16 sec. 4 of the Mol.p.c.). Intentional acts threatened with imprisonment exceeding twelve years should be considered particularly serious offences (Art. 16 sec. 5 of the Mol.p.c.). Intentional prohibited acts, punishable by life imprisonment, should be considered extremely serious offences (Art. 16 sec. 6 of the Mol.p.c.).

[356] The liability of both natural persons and collective entities is foreseen. The conditions for liability of the second class of entities are included in Art. 21 sec. 3 of the Mol.p.c. A legal person

whoevers produces the monetary tokens (banknotes and coins – including jubilee or commemorative notes – issued by the National Bank of Moldova or other authorised body of a foreign state or the Monetary Union) or securities used for making payments. As part of the statutory threat, the offence was penalised with penalty[357] of imprisonment for between five and ten years,[358] and in the case of a legal person, a cumulative fine of between two and five thousand contractual units can be adjudged, along with deprivation of the right to conduct a specific type of activity.[359] Aggravated types of counterfeiting money and its surrogates are included

– with the exception of public entities – is liable for an act if it did not comply or did not properly comply with the provisions providing for obligations or prohibitions to perform a specific activity and it was established that: the criminal act was committed in its interest by a natural person holding a managerial position, acting on their own or as part of a body of a legal person (letter a); or the commission of a criminal act has been approved by a person holding a managerial position in the structure of the legal person (letter b) or the act has been committed due to the lack of proper supervision or control over the perpetrator by a person holding a managerial position (letter c). It is important to indicate the scope of powers or duties of a person holding a managerial position in the structure of a legal person. In accordance with Art. 21 sec. 3^1 of the Mol.o.c., a person with at least one of the following competences: to represent a legal person (letter a); to take binding decisions on behalf of a legal person (letter b) or to carry out inspections in its framework (letter c).

[357] The catalogue of sanctions against perpetrators – natural persons – is included in Art. 62 sec. 1 letters b–g of the Mol.p.c. The following were listed: deprivation of the right to hold certain positions or carry out certain activities (letter b); loss of the right to drive certain means of transport (letter b^1); loss of military rank, honorary titles and state decorations (letter c); obligation to perform unpaid work for social purposes (letter d); deprivation of liberty (letter f) and life imprisonment (letter g). The above catalogue should be divided into primary and supplementary penalties. The first include: the obligation to provide unpaid work for social purposes, imprisonment and life imprisonment (Art. 62 sec. 2–3 of the Mol.p.c.). Both the fine and the ban on holding specific positions or conducting specific activities may be used as both a primary and a supplementary penalty (Art. 62 sec. 4 of the Mol.p.c.). The loss of military rank, honorary titles, state decorations and the loss of the right to drive certain means of transport are used only as a supplementary penalty (Art. 62 sec. 5–6 of the Mol.p.c.). It is worth pointing out the consequences provided for the perpetrators – collective entities (Art. 63 sec. 1 of the Mol.p.c.). Legal persons can be fined (letter a); deprived of the right to conduct a specific activity (letter b) or the entity liquidated (letter c). The fine acts as the primary penalty; other types of sanctions qualify as both primary and complementary (Art. 63 sec. 2–3 of the Mol.p.c.)

[358] Pursuant to Art. 70 sec. 1 of the Mol.p.c., the sentence of imprisonment consists in isolating the person guilty of committing the crime by isolating it from the everyday environment and placing it in a prison. Its term ranges from three months to twenty years (Art. 70 sec. 2 of the Mol.p.c.)

[359] Pursuant to Art. 64 sec. 2 of the Mol.p.c., a fine is adjudged in contractual units, where one unit is fifty lei. The amount of the fine against natural persons is set between five hundred and three thousand contractual units, and in the case of crimes committed for the purpose of obtaining a financial benefit – up to twenty thousand units. The amount of a specific penalty is determined taking into account the gravity of the crime committed, the financial situation of the perpetrator and their family (Art. 64 sec. 3 of the Mol.p.c.).

in Art. 236 sec. 2 of the Mol.p.c. Modifying features include the execution of the act by an organised criminal group[360] or a criminal organisation (letter b)[361] or the commission of a crime, on a particularly large scale (letter c).[362] In the above cases, a more severe criminal reaction is the liability for penalty of seven to fifteen years' imprisonment and, in the case of legal persons, a fine of between four thousand and seven thousand contractual units together with deprivation of the right to conduct a specific activity or liquidation of that legal person. The second of the acts grouped in the first category is the type under Art. 237 sec. 1 of the Mol.p.c. In accordance with that provision, a person who, in order to place on the market, produces false cards, food stamps or other payment instruments which do not constitute monetary marks or securities but which establish or confer rights or obligations as to property, is liable to prosecution. The implementation of the elements of this type was subject to a penalty in the form of a fine of five hundred and fifty to one thousand fifty contractual units or unpaid work for social purposes from one hundred eighty to two hundred and forty hours or a penalty of imprisonment for up to five years. If the perpetrator is a legal person, there is a risk of a cumulative fine of two thousand to four thousand contractual units together with the deprivation of the right to conduct a specific activity. Modified types of counterfeiting other legal tenders are also

[360] Pursuant to the contents of Art. 46 of the Mol.p.c., an organized criminal group should be understood as a permanent union of persons, who have previously organized themselves to commit one or more crimes.

[361] Pursuant to Art. 47 sec. 1 of the Mol.p.c., a criminal organization should be understood as a union of criminal groups, organized into a stable community, whose activity is based on the division of tasks between the members of the organization and its structure in order to influence the economic activity of other entities or control it in order to achieve a financial or political benefit. Distinction between the organizer or leader of the criminal organization and its member is also significant. It determines the liability of these two subjects. The first is the subject that created the criminal organization or manages it and is responsible for all crimes committed by the organization (Art. 47 sec. 3–4 of the Mol.p.c.). A member of the organization is responsible only for crimes in which they participated in the preparation or commission (Art. 47 sec. 5 of the Mol.p.c.). The active repentance clause provided for members of a criminal organisation should also be mentioned. This subject may be released from liability if they voluntarily reported the existence of a criminal organization and helped to reveal the crimes committed by it or contributed to the disclosure of its organizers, leaders or members (Art. 47 sec. 6 of the Mol.p.c.).

[362] Pursuant to Art. 126 sec. 1^1 of the Mol.p.c., the value of damage caused by an entity or group of persons that exceeds forty times the monthly remuneration is considered to be particularly large in relation to the values stolen, acquired, received, produced, destroyed, used, transported or of stored goods, the value of which is determined on the basis of the monthly average of wages converted into the appropriate economic factor, determined by a government decision at the time of committing the act. It also takes into account the financial situation and income of the perpetrator, the number of persons dependent on them and other circumstances affecting their property relations (Art. 126 sec. 2 of the Mol.p.c.).

foreseen. Aggravating elements are included in Art. 237 sec. 2 of the Mol.p.c. These include the commission of the offence by a public official or other public servant in their capacity[363] (letter b); by an organised criminal group or criminal organisation (letter c); or on a particularly large scale (letter d). Perpetration of the aggravated type is subject to a penalty of four to eight years' imprisonment – and in the case of legal persons – a fine of four thousand to seven thousand contractual units and deprivation of the right to conduct a specific activity or liquidation of the legal person.

When initiating considerations on types from the second category, we should analyse Art. 236 sec. 1 sentence 2 of the Mol.p.c. Marketing counterfeiting or altered monetary tokens (banknotes and coins – including jubilee or commemorative coins – issued by the National Bank of Moldova or another authorised body of a foreign state or the Monetary Union) or securities used for making payments, shall be liable to criminal prosecution. The type was penalized with five to ten years' imprisonment, and in the case of a legal person, a fine of two to five thousand contractual units, along with deprivation of the right to conduct a specific activity. As in the case of counterfeiting, the issue of liability for modified types is presented (Art. 236 sec. 2 of the Mol.p.c.). The aggravating elements include the perpetration of the crime: by an organized criminal group or criminal organization (letter b) or on a particularly large scale (letter c). The compliance of the perpetrator's behaviour with the statutory pattern implies liability under penalty of imprisonment for seven to fifteen years. On the other hand, legal persons can be fined with from four to seven thousand contractual units together with deprivation of the right to conduct a specific activity or liquidation of the legal person.

363 There is lack of a definition of a public official that would explain the subjective character of the type pursuant to Art. 237 sec. 2 letter b of the Mol.p.c. Interpretative guidance may be found in Art. 123^1 sections 1 and 2 of the Mol.p.c., in the content of which the legal definitions of a foreign public official and an international official are included. In accordance with Art. 123^1 sec. 1 of the Mol.p.c., a foreign public official means any person appointed or elected who exercises a mandate in a legislative, executive, administrative or judicial body in a foreign state. In addition, a person holding a public office in a foreign state or a foreign public enterprise and a juror in the foreign state judiciary system were also listed. An international official (Art. 123^1 sec. 2 of the Mo.p.c.) should be understood as an official of an international or supranational public organization or a person authorized by such an organization to act on its behalf. Members of parliamentary assemblies of international or pan-national organizations and entities exercising judicial functions in international courts, including those responsible for office matters of the secretariat, should also be included.

J. Bulgaria (Penal Code of 1 May 1968)[364]

Prohibited acts that interfere with the authenticity and credibility of money, securities and other legal tenders in circulation are typified in the Special Part, Chapter Six – "Crimes against the Economy", Section IV – "Crimes Against the Monetary and Credit System".

Under Bulgarian law, crimes can be grouped into four categories. The first are acts consisting in counterfeiting money (Art. 243 sec. 1 of the Bu.p.c.) securities (Art. 243 sec. 2 item 2 of the Bu.p.c.) or other legal tenders (Art. 243 sec. 2 item 3 of the Bu.p.c.). The second includes behaviours that boil down to circulating imitations of money (Art. 244a sec. 2 of the Bu.p.c.) or other legal tenders (Art. 244 sec. 1 sentence 1 of the Bu.p.c.). As part of the third one, we find fencing of counterfeit monetary tokens (Art. 244a sec. 1 of the Bu.p.c.) or other legal tenders (Art. 244 sec. 1 sentence 2 of the Bu.p.c.). The last category includes two forms of preparation for counterfeiting of the mentioned values (Art. 246 sec. 1 and sec. 3 of the Bu.p.c.). The considerations will be extended to the topic of the institution of active repentance (Art. 246 sec. 2 of the Bu.p.c.).

The analysis on crimes grouped in the first category is opened by the act typified in Art. 243 sec. 1 of the Bu.p.c. Who, within the country or abroad, develops non-existent or counterfeits or alters existing money with an exchange rate, is liable to prosecution for counterfeiting. On the basis of a statutory threat, the offender is liable to a penalty[365] of from five to fifteen years' imprisonment.[366] The second type of counterfeiting is included in Art. 243 sec. 2 items 2 and 3 of the Bu.p.c. Pursuant to its content, anyone who counterfeits or alters: bonds issued by the state or other government securities (item 2) or payment instruments[367] (item 3), is liable to imprisonment for a term of five to fifteen years.

The second of the distinguished categories is opened by the offence under Art. 244 sec. 1 sentence 1 of the Bu.p.c. On its basis, whoever markets counterfeit or

[364] Наказателния Кодекс (source: https://www.lex.bg/laws/ldoc/1589654529 [access: 1.12.2022]), hereinafter referred to as Bu.p.c.

[365] The types of penalties are listed in Art. 37 sec. 1 items 1–11 of the Bu.p.c. The provision indicates: life imprisonment (item 1); imprisonment (item 1a); confiscation of property (item 3); fine (item 4); deprivation of the right to hold a specific state or public position (item 6); deprivation of the right to exercise a specific profession or activity (item 7); loss of the right to receive an order, honorary title or decoration (item 9); loss of military rank (item 10) or public reprimand (item 11).

[366] Pursuant to Art. 39 sec. 1 of the Bu.p.c., imprisonment is adjudged from three months to twenty years. Exceptionally, a prison sentence of up to thirty years may be adjudged in place of a life sentence for the so-called multiple offence or some, particularly serious intentional offences (Art. 39 sec. 2 of the Bu.p.c.).

[367] "Payment instrument" should be understood as a material means that allows, alone or in combination with another means, the transfer of money or cash values (Art. 93 sec. 24 of the Bu.p.c.).

altered money tokens or other tokens or payment instruments is liable to prosecution. Breaking the norm expressed in this provision was punishable by imprisonment for a term of two to eight years. The act under Art. 244a sec. 2 of the Bu.p.c. requires our consideration. A person who knowingly puts into circulation banknotes which have not yet been issued but which are intended for circulation as legal tender is liable to prosecution. The implementation of elements of this type is sanctioned under the threat of imprisonment for a period not exceeding eight years.

The third category is devoted to fencing. In this context, we should point out Art. 244 sec. 1 sentence 2 of the Bu.p.c. Pursuant to that provision, whoever, knowing of its inauthenticity, accepts, acquires, uses or transmits counterfeit or altered monetary tokens or other tokens or payment instruments across national borders, is liable to prosecution. From the point of view of the statutory threat of punishment, the act was penalized with imprisonment for a term of two to eight years. Fencing of currency is referred to in Art. 244a sec. 1 of the Bu.p.c. Pursuant to the wording of the said provision, anyone who, contrary to the established procedure, accepts, purchases, transports or transports across the state borders currency notes with exchange rates in the country or abroad, or banknotes that have not yet been issued but are intended for circulation as legal tender, is liable to prosecution. In this case, the offender is punishable by imprisonment for a term of five to fifteen years.

The last category includes special types of preparation for offences covered by Section IV of the Bulgarian Act.[368] The analysed legal order provides for two variations thereof. The first one is included in Art. 246 sec. 1 of the Bu.p.c. The scope of the provision includes anyone who is preparing to commit crimes under Art. 243 of the Bu.p.c. and circulation of counterfeit money marks or payment instruments. The perpetrator is threatened with imprisonment for a period not exceeding three years. The second, was typified in Art. 246 sec. 3 of the Bu.p.c. On the basis of this provision, the preparation, receipt, acquisition, storage or concealment of objects, materials or tools, computer software and data and other means or elements used to protect banknotes against counterfeiting or intended for their production are criminalised. In this case, the offender is punishable by up to six years' imprisonment.

Summing up the analyzes, it is necessary to indicate the institution of active repentance pursuant to Art. 246 sec. 2 of the Bu.p.c. An accomplice who, before the end of the counterfeiting, the start of the distribution of counterfeits or the end of the preparation of imitations of monetary tokens, withdraws from the act and reports to the competent authorities, shall not be punished.

[368] Preparation consists in obtaining funds, finding accomplices and creating the conditions for committing the planned crime before its implementation (Art. 17 sec. 1 of the Bu.p.c.). Moreover, it is penalised only in the cases indicated in the act (Art. 17 sec. 2 of the Bu.p.c.).

K. North Macedonia (Penal Code of 1 November 1996)[369]

Provisions typifying criminal offences affecting the regularity of trading in money, securities or other legal tenders can be found in the Special Part, Chapter Twenty-five – "Offences against public finances, payments and the economy".

Criminal offences that will be the subject of our analysis fall into four categories. The first one includes counterfeiting of money (Art. 268 sec. 1 of the NM.p.c. and Art. 271a of the NM.p.c.), securities (Art. 269 sec. 1 sentence 1 of the NM.p.c. and Art. 271a of the NM.p.c.) or other legal tenders (Art. 271 sec. 3 of the NM.p.c.). The framework of the second category includes the fencing of imitation currency (Art. 268 sec. 2 of the NM.p.c.) or values (Art. 269 sec. 2 of the NM.p.c.). The third category consists of behaviours consisting in putting into circulation counterfeits of money (Art. 268 sec. 4 of the NM.p.c.) or securities (Art. 269 sec. 1 sentence 2 of the NM.p.c.). The last category includes preparation for counterfeiting currency or securities (Art. 271 sec. 2–3 of the NM.p.c.) or other legal tenders (Art. 274b sec. 3 of the NM.p.c.).

Attention should be paid to the type of Art. 268 sec. 1 of the NM.p.c. According to its content, a person intending to market it as genuine produces counterfeit or alters real money, is liable to prosecution.[370] This prohibited act was penalised with imprisonment[371] for a term of one to ten years.[372] In addition, responsibility for the types of modified currency counterfeiting is provided for (Art. 268 sec. 3 of the NM.p.c.). Aggravating elements include the consequence of behaviour, which is to cause disruption to the regularity of the country's economy. In such a case, the

[369] Кривичен законик (source: https://www.pravdiko.mk/wp-content/uploads/2013/11/Krivichen-zakonik-integralen-prechisten-tekst.pdf [access: 1.12.2022]), hereinafter referred to as NM.p.c.

[370] Money is considered to be legal tender in nominal cash or electronic money that is legally in circulation from North Macedonia or in a foreign country (Art. 122 sec. 12 of the NM.p.c.).

[371] The catalogue of penalties is included in Art. 33 sec. 1 items 1–6 of the NM.p.c. This provision lists: imprisonment (item 1); a fine (item 2); a ban on performing a profession, activity or service (item 3); a driving ban (item 4); expulsion of a foreigner from the country (item 5) and a ban on admission to a sports match (item 6). The above list should be confronted with the division of sanctions into primary and additional ones. A custodial sentence may only be imposed as a primary penalty (Art. 33 sec. 2 of the NM.p.c.). A fine may be imposed both as a primary and an additional penalty – in addition to a custodial sentence or with a conditional custodial sentence (Art. 33 sec. 3 of the NM.p.c.). A prohibition on exercising a profession, activity or service may be imposed only as an additional penalty in addition to imprisonment or with a conditional imprisonment (Art. 33 sec. 6 of the NM.p.c.). With the primary penalty, one or more additional penalties may be imposed on the perpetrator (Art. 33 sec. 5 of the NM.p.c.).

[372] Pursuant to Art. 35 sec. 1 of the NM.p.c., a sentence of imprisonment is imposed for from thirty days to twenty years. If the sanction provides for the threat of life imprisonment, a sentence of up to forty years may be adjudged. The penalty in question shall be adjudged in full months or years, and in the case of a term of up to six months, also in days (Art. 35 sec. 5 of the NM.p.c.).

perpetrator is liable to a custodial sentence of not less than five years. Next, comments are required to the act typified in Art. 269 sec. 1 sentence 1 of the NM.p.c. According to its content, the criminalisation covers the production of counterfeit or modification of authentic securities with a view of them being traded as real or handed over to another person for use.[373] The implementation of the elements of the type was punishable by imprisonment for a term of one to ten years. A specific variant of *skimming* can be observed in Art. 271 sec. 3 of the NM.p.c. Criminal liability is imposed on anyone who installs means to create fake payment cards on ATMs or otherwise uses them in order to obtain authentic bank card details concerning their holders.[374] The provision provides for a penalty of three to ten years' imprisonment.

Summarizing the first category of behaviour, it is necessary to indicate the overriding provision, which will apply to both analyzed cases of counterfeiting. We are talking about Art. 271a sec. 1 items 1 and 2 of the NM.p.c. A person who, contrary to the decision of the competent authority as to their nature, quantity or other characteristics (item 1) or to the specific permission of the competent authority to withdraw or destroy, produces the money or securities in question, or leaves such money or securities in circulation (item 2), is also liable to prosecution for counterfeiting or altering. From the point of view of the threat of punishment, reference was made to the regulations specifying individual varieties of counterfeiting. It is worth noting that in relation to the crime in question, the Macedonian legislator provided for the liability of legal persons under penalty of a fine (Art. 271a sec. 2 of the NM.p.c.).[375]

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[373] For the purposes of criminal law, the following are considered to be securities: shares, bonds or other securities that are traded in Macedonia or in another country (Art. 122 sec. 14 of the NM.p.c.).

[374] Payment cards mean all types of payment instruments issued by banking institutions or other financial institutions that contain electronic data of persons and an electronically generated number that allow the holder to perform all types of financial transactions (Art. 122 sec. 15 of the NM.p.c.).

[375] The prerequisites for the liability of collective entities for a prohibited act under penalty of punishment are listed in Art. 28a sec. 1 and 2 items 1–3 of the NM.p.c. The liability of the legal person must be expressly reserved in the form of a specific clause. In accordance with Art. 28a sec. 1 of the NM.p.c., a legal person is responsible for an offence committed by the person responsible within its structure, when it is committed on its behalf or for its benefit. Pursuant to Art. 28a sec. 2 of the NM.p.c., a collective entity is liable for a crime by its employee or representative (if this fact is related to obtaining a significant financial benefit by that legal person or causing significant damage to another entity) if: it occurred in the implementation of an application, order, other decision or consent of the management, administrative or supervisory body (item 1); or it occurred in the result of the lack of proper supervision of the employee or representative by the management, administrative or supervisory body (item 2); or the management, administrative or supervisory body did not prevent the crime or concealed it or did not submit a notification of its commission before initiating the proceedings criminal offence against the offender (item 3).

The second category includes fencing of counterfeit currency or securities. What requires our analysis is Art. 268 sec. 2 of the NM.p.c. According to its content, a person who, intending to put into circulation as real, obtains or stores counterfeit or reworked money marks, is liable to prosecution. As part of the sanctions, it should be mentioned that provisions refer to the penalty provided for money counterfeiting. The aggravated type also deserves our attention (Art. 268 sec. 3 of the NM.p.c.). The element, the occurrence of which determines the threat of a penalty of not less than five years' imprisonment, is to cause disruption to the economy of the country. In the context of criminal law protection of assets, we should point to Art. 269 sec. 2 of the NM.p.c. On its basis, a perpetrator who intends to put into circulation as real acquires or stores counterfeit or altered securities, is liable to prosecution. Pointing to the threat of sanctions, a reference to the threat provided for the counterfeiting of values was used.

Referring to the third category, it is agreed that it concerns types consisting in putting an imitation into circulation. We should analyse type under Art. 268 sec. 4 of the NM.p.c. It is interesting, because as one of the few, it directly provides for the implementation of a causative action in the form of an action or neglect. The scope of application of that provision shall be extended to those who, having received counterfeit or altered monetary tokens, put them into circulation or who, knowing that fact, fail to report them to the competent authorities. The above offence was penalised with a fine or imprisonment for up to three years.[376] It is worth noting the act typified in Art. 269 sec. 1 sentence 2 of the NM.p.c. Pursuant to the said provision, whoever uses counterfeit or altered securities, is liable to prosecution. The said act was punishable by imprisonment for a term of one year to ten years.

On the basis of Art. 28a sec. 1 or 2 NM.p.c., the State Treasury is excluded from liablity of collective entities (Art. 28a sec. 3 of the NM.p.c.).

[376] Pursuant to Art. 38 sec. 1 of the NM.p.c., a fine is adjudged as five to three hundred and sixty daily rates. The process of adjudging a fine is similar to the Polish solution, due to its two-step nature. The main difference is the way in which the decision is included in the operative part. The court judgment includes the amount of the fine calculated as the product of multiplying the number of daily fine rates by the established value of one daily rate (Art. 38 sec. 4 of the NM.p.c.). The amount of the rate is determined taking into account the financial and personal conditions of the perpetrator, as a starting point, taking the daily income that the offender achieves or can achieve and their family obligations and other obligations existing at the time of the judgment into account. Such factors indicate that the amount of one rate may not (converted into denar) be lower than one euro, nor may it exceed five thousand euros (Art. 38 sec. 3 of the NM.p.c.). When a fine is adjudged as an additional penalty, the court determines it in a fixed monetary amount, without applying the above provisions. Its amount may not be lower (converted into a denar) than twenty euros, nor exceed five thousand euros (Art. 38 sec. 6 of the NM.p.c.).

The fourth category of acts includes the *sui generis* preparation for the counterfeiting of the aforementioned values.[377] The issues regulated separately are the preparatory activities for counterfeiting of monetary tokens and its surrogates (Art. 271 sec. 2 of the NM.p.c.) for the release of other legal tenders into circulation (Art. 274b sec. 3 of the NM.p.c.). Under the first of these provisions, whoever manufactures, acquires, stores, sells or transfers for use items, computer software and other security measures or components for the purpose of counterfeiting money, securities or payment cards, which serve to protect these values against counterfeiting, shall be held liable. The offence was criminalised under penalty of three to ten years' imprisonment. The second act in this category is the type under Art. 274b sec. 3 of the NM.p.c. On the basis of this provision, criminal liability will be borne by whoever intends to use for counterfeiting or altering payment cards or using them, obtains the bank details of authentic cards and the data of their holders. From the point of view of the statutory threat, a reference to the sanction provided for in Art. 274b sec. 1 of the NM.p.c. is made. There is also a provision regulating liability for modified type. The aggravating element is the perpetration of a causative act by a member of a group, gang or criminal association (Art. 274b sec. 5 of the NM.p.c.). In such a case, the perpetrator is liable to a custodial sentence of not less than four years. It should be mentioned that under the penalty of a fine, the liability of legal persons for the implementation of the analyzed type was also provided for (Art. 274b sec. 6 of the NM.p.c.).

L. Albania (Penal Code of 27 January 1995)[378]

Provisions specifying acts constituting attacks on the correctness of trading in terms of the authenticity and credibility of money and its surrogates should be sought in the Special Part, Section VII – "Counterfeit money and securities".

The crimes analysed can be divided into three categories. The first one is the counterfeiting or altering of money (Art. 183 sentence 1 of the Al.p.c.) or securities (Art. 184 sentence 1 of the Al.p.c.).[379] The second category is behaviour that leads to

[377] Preparation may consist in: acquiring or adapting means to commit a crime, removing obstacles preventing its commission, planning or organizing a crime with other persons, as well as other activities creating conditions for the immediate execution of the crime, but which do not constitute an executive action of the type (Art. 18 sec. 3 of the NM.p.c.). Preparation is punishable only if the law so provides (Art. 18 sec. 1 of the NM.p.c.).

[378] Kodi Penal i Republikës së Shqipërisë Miratuar me ligjin nr.7895, datë 27.1.1995 (source: https://www.drejtesia.gov.al/wp-content/uploads/2017/11/Kodi_Penal-1.pdf [access: 1.12.2022]), hereinafter referred to as Al.p.c.

[379] The class of other legal tenders has not been distinguished. For the purposes of *jus puniendi*, other legal tenders are understood as a special variant of securities.

the circulation of counterfeit monetary tokens (Art. 183 sentence 2 of the Al.p.c.) or values (Art. 184 sentence 2 of the Al.p.c.). The third category involves the preparation for counterfeiting of currency, securities or other legal tenders (Art. 185 of the Al.p.c.). The detailed reasoning will be preceded by a comment on the validity of the criminal law from the point of view of the equivalent of the Polish principle of objective territoriality and nationality in the normative dimension.

When initiating considerations from the indicated issue, it is necessary to indicate Art. 7 letter f of the Al.p.c. According to its content, a foreigner who commits an offence in the territory of the Republic of Albania will be held liable in accordance with the law of Albania. Moreover, the criminal law of Albania also applies to a foreigner who has committed the offence of falsifying the seals of the Albanian state, Albanian money or securities outside its territory.

The analysis of types grouped in the first category should start with the interpretation of Art. 183 sentence 1 of the Al.p.c. A person who counterfeits or alters money shall be prosecuted. The offence was penalized with a penalty[380] of imprisonment for a term of five to fifteen years.[381] The second type of this category is the act defined in Art. 184 sentence 1 of the Al.p.c. On its basis, the responsibility will be borne by a perpetrator who counterfeits or alters checks, bills of exchange, credit cards or other securities. The implementation of the elements of the type was penalised with imprisonment for three to ten years.

In the context of putting the counterfeit into circulation, attention should be paid to Art. 183 sentence 2 of the Al.p.c. Whoever places counterfeit or altered money on the market, will fall under the scope of this provision. The perpetrator is liable to the same punishment as for counterfeiting. Subsequently, we should analyse the act under Art. 184 sentence 2 of the Al.p.c. On its basis, whoever places counterfeit or altered cheques, bills of exchange, credit cards or other securities on the market

[380] A dichotomous division of penalties into primary and additional is envisaged. Their adjudgment depends on the category of the offence. Pursuant to Art. 29 sentence 1 of the Al.p.c., persons who committed a crime can be adjudged a death or life imprisonment sentence (item 1); imprisonment (item 2) or a fine (item 3). In accordance with Art. 29 sentence 2 of the Al.p.c. in the case of committing a criminal offence, the sentence may include a penalty of: imprisonment (point 1) or a fine (point 2). To additional penalties (Art. 30 sentence 1 of the Al.p.c.) include: a ban on performing the function of a state official or performing a public function (item 1); confiscation of means for committing a crime and the benefits resulting from it (item 2); a ban on driving motor vehicles (item 3); loss of decorations or honorary titles (item 4); a ban on performing a specific activity or performing a craft (item 5); deprivation of the right to exercise managerial functions in the structures of legal persons (item 6); a ban on staying in one or more administrative units of the country (item 7); expulsion from the territory of Albania (item 8) and publication of the judgment (item 9).

[381] Pursuant to Art. 32 sentence 1 of the Al.p.c., a sentence of imprisonment for a criminal offence is adjudged for from five days to twenty-five years.

is liable to prosecution. In this case, the perpetrator is punishable by imprisonment for three to ten years.

The last category includes the preparation for counterfeiting of the aforelisted values. In accordance with Art. 185 of the Al.p.c., the creation or possession of tools for counterfeiting money, cheques, bills of exchange, credit cards or other securities is subject to criminalisation. From the point of view of the statutory threat, the act was penalized under penalty of a fine or imprisonment for a period of not less than one year and not exceeding three years.[382]

6. Mediterranean Countries

A. Greece (Penal Code of 1 January 1951)[383]

Provisions that are of relevance for further consideration can be found in Book II, Particular Part, Chapter Nine – "Offences related to currency, other legal tenders and banknotes".

Prohibited acts can be divided into four categories. The first one is a set of behaviours consisting in the counterfeiting of monetary tokens (Art. 207 sec. 1 sentence 1 of the Gr.p.c. and Art. 208A sentence 1 of the Gr.p.c.) or other legal tenders (Art. 207 sec. 2 of the Gr.p.c.). The second category includes fencing of imitation of money (Art. 207 sec. 1 sentence 2 and Art. 208A sentence 2 of the Gr.p.c.). The third category is the marketing of counterfeit currency (Art. 208 sentence 1 of the Gr.p.c. and Art. 208A sentence 3 of the Gr.p.c.) or other legal tenders (Art. 208 sentence 2 of the Gr.p.c.). The last category is the implementation of preparatory activities for counterfeiting or fencing of monetary tokens (Art. 211 of the Gr.p.c.). We will also analyse the institution of active repentance (Art. 212 sections 1 and 2 of the Gr.p.c.).

The analysis of individual types will be preceded by a general note. It concerns the application of the Greek Penal Code to acts committed abroad. In accordance with Art. 8 letter h of the Gr.p.c., notwithstanding the provisions in force at the place where the offence was committed, the Greek criminal law applies to citizens or foreigners who commit a currency-related offence abroad.

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[382] Pursuant to Art. 34 sentence 1 of the Al.p.c., the fine consists in the payment to the state of a monetary amount within the limits provided for in the Act. The amount of the fine varies in relation to criminal offences and minor offences. As for the former, a fine is adjudged in the amount from ten thousand to two million Albanian lek (Art. 34 sentence 3 of the Al.p.c.). When the case concerns a minor offense, the offender can be fined from five thousand to two hundred thousand Albanian lek (Art. 34 sentence 4 of the Al.p.c.).

[383] Ποινικός Κώδικας, Νόμος 1608/1950 (source: https://www.lawspot.gr/nomikes-plirofories/nomothesia/poinikos-kodikas-nomos-4619-2019 [access: 1.12.2022]), hereinafter referred to as Gr.p.c.

When considering the types from the first category, it is necessary to analyse the act under Art. 207 sec. 1 sentence 1 of the Gr.p.c. On its basis who, in order to be marketed as authentic, counterfeits or converts the currency of any state or issuing authority – both during its legal circulation, before it and when it is accepted for exchange by the competent authorities, is liable to prosecution. Implementation of the type elements entails liability to cumulative penalty[384] of a fine[385] and imprisonment for up to ten years.[386]

A specific – when implementation of the causative action is considered – type of counterfeiting is described in Art. 208A sentence 1 of the Gr.p.c. This provision applies to whoever, without permission or exceeding the content of the permit of the competent authority, using legal equipment and materials, intentionally produces currency during or before the time of its legal circulation or during the period in which it is allowed to be exchanged by the competent authorities. The above prohibited act was penalized under the threat of a cumulative fine together with imprisonment for a period not exceeding ten years. In the context of the criminal law protection of other legal tenders against counterfeiting, attention should be paid to Art. 207 sec. 2 of the Gr.p.c. Pursuant to that provision, anyone who, in order to market as authentic, counterfeits or alters any tangible instrument other than a currency which, due to its specific nature – either alone or in combination with other legal tenders – enables the holder or transmitter to transfer money or mon-

[384] Penalties are divided into two classes. There are primary penalties (Art. 50 letters a–c of the Gr.p.c.) or additional ones (Art. 59 letters a–e of the Gr.p.c.). In accordance with Art. 50 of the Gr.p.c., the primary penalties include: imprisonment (letter a); fine (letter b) and social work (letter c). Within the meaning of Art. 59 of the Gr.p.c., the following sanctions are complementary in nature: prohibition on holding a position or positions (letter a); prohibition on exercising a profession (letter b); withdrawal of the right to drive vehicles or use means of transport (letter c); publication of the judgment (letter d) and confiscation (letter e).

[385] Pursuant to Art. 57 sec. 1 of the Gr.p.c., the fine is determined in daily rates. Unless a special provision provides otherwise, the fine may not exceed: ninety daily rates, where the act is penalised only with a fine as the primary penalty or cumulatively with the social work penalty (Art. 57 sec. 2 letter a of the Gr.p.c.); one hundred and eighty daily rates, when the act was threatened with a cumulative fine with imprisonment (Art. 57 sec. 2 letter b of the Gr.p.c.) or three hundred and sixty daily rates, when the act is threatened with a cumulative fine and imprisonment (Art. 57 sec. 2 letter c of the Gr.p.c.). Unless a specific provision provides otherwise, the value of the daily rate may not be lower than one euro nor exceed one hundred euro (Art. 57 sec. 3 of the Gr.p.c.).

[386] Pursuant to Art. 51 sec. 1 of the Gr.p.c., the sentences of deprivation of liberty are: detention, deprivation of liberty in a strict sense and placement in a special youth detention centre. The time of their execution counts in full days, weeks, months or years. Pursuant to Art. 52 sec. 1 of the Gr.p.c. the penalty of imprisonment is of a timely nature, and only in exceptional cases, when the law provides so, it may be imposed as a life imprisonment. The term of imprisonment is from five to fifteen years (Art. 52 sec. 2 of the Gr.p.c.). The penalty of detention is from ten days to five years (Art. 53 of the Gr.p.c.).

etary values and is protected against counterfeiting or unauthorised use by means of a specimen, code, signature or other convenient means (i.e. credit cards, other cards issued by financial institutions, travellers' cheques, Eurochecks and foreign currency), is liable to prosecution. Breaking this norm was threatened with a cumulative fine and imprisonment for up to ten years. The Greek legislator provided for a mitigated form of counterfeiting of monetary tokens (Art. 207 sec. 3 of the Gr.p.c.). Circumstances affecting more lenient liability, recognized as a clause of particularly minor cases, are: a small number of manufactured counterfeits, a small value of manufactured imitations. In such cases, the perpetrator is subject to a cumulative fine and detention for a period not exceeding three years.

When initiating the analysis of types grouped in the second category, attention should be paid to the offence under Art. 207 sec. 1 sentence 1 of the Gr.p.c. On the basis of the said provision who, in order to be marketed as authentic, holds counterfeited or altered currency of any state or issuing authority – both during its legal circulation, before it and when it is accepted for exchange by the competent authorities, is liable to prosecution. From the point of view of the statutory threat, this type was penalized under the threat of a cumulative fine and up to ten years' imprisonment. In addition, it is worth paying attention to the act characterized in Art. 208A sentence 2 of the Gr.p.c. On the basis of the said provision, who intentionally holds or acquires the currency that was created using legal devices and materials, without authorisation or exceeding the content of the authorisation of a competent authority and during or before the time of its legal circulation or during the period during which it is authorised for exchange by the competent authorities, shall be liable to prosecution. The implementation of elements of this type involves criminal liability and the threat of a cumulative fine and imprisonment for up to ten years.

The third category groups acts consisting in releasing imitations of currency or legal tender into circulation. We should analyse Art. 208 sentence 1 of the Gr.p.c. According to its wording, a person who, knowing about the counterfeit, puts into circulation as authentic monetary tokens of any state or issuing authority – both during their legal circulation, before it, and when they are accepted for exchange by the competent authorities, is liable to prosecution. In this case, the perpetrator is liable to a cumulative fine and imprisonment of up to ten years. The issue of criminal law protection of legal tender is presented in a similar manner. Pursuant to Art. 208 sentence 2 of the Gr.p.c., who, knowing about the counterfeit, puts into circulation as authentic other legal tenders of a foreign state or issuing authority – both during their legal circulation, before it, and when they are accepted for exchange by the competent authorities, is liable to a cumulative fine and imprisonment for up to ten years. The mitigated type of marketing of a counterfeit money or legal tender requires attention. In accordance with Art. 208 sentence 3 of the Gr.p.c., in particularly minor cases involving a small number of imitations placed on the market or

their low value, the perpetrator is liable to a cumulative fine and imprisonment for a period not exceeding two years. Next, attention should be paid to the act under Art. 208A sentence 3 of the Gr.p.c. According to its content, who deliberately puts into circulation a currency that was created using legal devices and materials without authorisation or exceeding the content of the authorisation of the competent authority and during or before the time of its legal circulation or during the period in which it is allowed to be exchanged by the competent authorities, is liable to prosecution. Committing the act was prohibited under the threat of a cumulative fine and imprisonment for up to ten years.

The last category includes the preparation for counterfeiting of monetary tokens or legal tender or fencing them (Art. 211 of the Gr.p.c.). On the basis of this provision, whoever intending to commit any of the offences referred to in Art. 207 or in Art. 208a of the Gr.p.c., manufactures or possesses tools, objects, computer software or other means specially adapted and useful for this purpose, in particular holograms or other components of monetary tokens that serve to protect them against fraud, is liable to prosecution. The implementation of the elements of the type was subjected to a cumulative sanction of a fine and imprisonment for a period not exceeding two years.

Considerations of crimes under the legal order of Greece would be incomplete if we failed to analyse the institution of active repentance.[387] In this context, it should be noted that pursuant to Art. 212 sentence 1 of the Gr.p.c., one does not commit an offence under Art. 207, Art. 208 or Art. 208 of the Gr.p.c., when they voluntarily, before placing on the market and obtaining information by law enforcement authorities about a criminal activity, destroys counterfeit, processed or created in excessive quantities imitations of money or other legal tenders. One does not commit an offence under Art. 211 of the Gr.p.c., when they voluntarily destroyed tools, objects, computer software or other means specially adapted and useful for counterfeiting or fencing monetary tokens or other legal tenders (Art. 212 sentence 2 of the Gr.p.c.).

[387] The general formula of active repentance can be found in Art. 44 sentence 1 of the Gr.p.c. An attempt is not penalised when the perpetrator, after initiating the commission of a prohibited act, does not complete it in the absence of external obstacles and on their own will. A perpetrator who has committed a prohibited act but has voluntarily prevented the occurrence of its effect shall be punished for attempting with a penalty reduced by half. The same applies if the effect was not present due to external cause, and the perpetrator nevertheless made serious efforts to prevent its occurrence (Art. 44 sentence 3 of the Gr.p.c.). On the other hand, if the perpetrator of an unsuccessful crime does not immediately repeat the act on their own volition, in the absence of external obstacles, they are punished for an attempt, with penalty reduced by half (Art. 44 sentence 2 of the Gr.p.c.).

B. Cyprus (Penal Code Act of 1 April 1959)[388]

Provisions typifying criminal acts that undermine the credibility of money in circulation should be sought in Part VIII – "Counterfeiting, Forgery of Currency and Similar Criminal Offences".

Under the legislation of Cyprus, offences that are the subject of our work can be divided into four categories. The first one groups offences consisting in counterfeiting (Art. 349 sentences 2 and 3 of the Cy.p.c) or altering (Art. 350 sentence 1 letters a–b of the Cy.p.c. and Art. 351 of the Cy.p.c) of monetary tokens. The second includes the marketing of imitation money (Art. 354 letters a–b of the Cy.p.c. and Art. 355 letter a of the Cy.p.c.). The third is the fencing behaviour in relation to imitation monetary tokens (Art. 350 sentence 1 letter c items 1–2 of the Cy.p.c.). The fourth category is devoted to the preparation for counterfeiting money (Art. 350 sentence 1 letter c subitems 3–5 of the Cy.p.c.).

It is worth noting that the indicated types are characterized by a bit of peculiarity in terms of comparative law analysis. In particular, this concerns the issue of (un) equal protection of national and foreign currency. What requires our analysis in this context is Art. 349 sentences 1–3 of the Cy.p.c. According to the said provision, whoever produces or begins to produce a counterfeit[389] currency, is guilty of an offence (sentence 1).[390] If the offence committed concerns a currency in circulation,[391] the perpetrator is liable to life imprisonment[392] (sentence 2).[393] Where the offence

[388] Ο περί Ποινικού Κώδικα Νόμος, ΚΕΦ.154 (source: http://www.cylaw.org/nomoi/enop/non-ind/0_154/index.html [access: 1.12.2022]), hereinafter referred to as Cy.p.c.

[389] "Counterfeit" means a currency that is not authentic but is sufficiently similar to, or clearly reminiscent of, to be perceived as authentic. This term includes both the counterfeit of an authentic currency that has been crafted and one that has been altered to resemble an authentic currency of greater value (Art. 348 sentence 2 of the Cy.p.c.).

[390] In Cyprus, there is a dichotomous division of prohibited acts into misdemeanours and offences (Art. 4 of the Cy.p.c.). A misdemeanour is an act prohibited under penalty, which is not an offence (sentence 1); and the offense is a prohibited act qualified as such under the threat of punishment, an attempt to commit it, and also failure to perform a duty (sentence 2).

[391] "Circulating" in relation to a currency means one that is legally used as money in the Republic of Cyprus (Art. 348 sentence 1 of the Cy.p.c.).

[392] The catalogue of sanctions is contained in Art. 26 letters a–g of the Cy.p.c. The following penalties may be imposed on a perpetrator: life imprisonment (letter a); imprisonment (letter b); fine (letter c); obligation to pay compensation (letter d); obligation to pay a bail to secure order and good conduct or to secure appearance at a court hearing (letter e); conditional suspension of enforcement of the penalty (letter f) or any other penalty provided for by specific provisions (letter g).

[393] Excluding premeditated murder and crimes under Art. 36 of the Cy.p.c. and Art. 37 of the Cy.p.c. (treason), if the act is penalized under the penalty of life imprisonment, the court may order a term imprisonment and a fine in the amount not exceeding the maximum permissible rate, instead of this penalty (Art. 29 of the Cy.p.c.).

involves the currency of a foreign sovereign or a state, the perpetrator shall be liable to a term of imprisonment of seven years (sentence 3). We are dealing with the typification of money processing on the basis of Art. 350 sentence 1 letters a–b of the Cy.p.c. According to the first of the foregoing, anyone who, for the purpose of minting counterfeits of gold or silver coins, plates or converts a piece of metal of any size or shape that is suitable for minting a coin, is liable to prosecution. In addition, the criminalisation included giving a piece of metal, size or shape suitable for easy coin minting, with the intention of making a counterfeit (Art. 350 sentence 1 letter b of the Cy.p.c.). In both cases, the perpetrator commits an offence and, when the action concerns money in circulation, they are liable to life imprisonment (Art. 350 sentence 2 of the Cy.p.c.). If it concerns only the currency of a foreign sovereign or state, the offender is liable to penalty of imprisonment for a period of seven years (Art. 350 sentence 3 of the Cy.p.c.). We should also indicate the specific type of money altering under Art. 351 of the Cy.p.c. According to this provision, anyone who, in order to put into circulation as an authentic handles a gold or silver coin that is in circulation in such a way that it reduces its weight (content of ore), is liable to prosecution. This crime is punished with seven years' imprisonment.

What requires attention in initiating the interpretation of types from the second category is Art. 354 letters a and b of the Cy.p.c. The scope of the provision covers a person who, knowing of the lack of authenticity and having at the time of committing the act any copy of the imitation, puts counterfeit currency in circulation. The circulation of counterfeits under Art. 354 letter b of the Cy.p.c. is defined in an interesting manner. On the basis of the provision, who puts a currency counterfeit into circulation knowing about its inauthenticity and on the same day or within ten days performs this activity again, shall be held liable. It is worth noting that the Cypriot legislator unequivocally opted for a complex characteristic of the causative action, refusing to attribute the release of the counterfeit into circulation to a one-off behaviour of the perpetrator. In carrying out the above-mentioned types, the perpetrator commits crimes punishable by seven years' imprisonment. In addition, we should also analyse the types under Art. 355 letter a of the Cy.p.c. On its basis, whoever, with the intention of deceiving another person, puts into circulation a currency that is not a circulating currency, is liable to prosecution. In the above case, the offender commits an offence penalised with a year of imprisonment.[394]

The third category includes the fencing of currency counterfeits. What deserves our attention in this context is Art. 350 sentence 1 letter c item 1 of the Cy.p.c. The scope of the provision covers the offender who, without authorization or in the

[394] If a special provision does not provide for a penalty for an offence, this act is subject to a custodial sentence of up to two years or a fine of up to one thousand five hundred pounds or both (Art. 35 of the Cy.p.c.)

absence of justification for their act, sells, pays or disposes of a counterfeit currency at a price higher than the nominal value. Pursuant to Art. 350 sentence 1 letter c item 2 of the Cy.p.c., a person who, knowing about the inauthenticity of money, without authorization or in the absence of justification for their act, introduces or transfers a currency counterfeit into the territory of the Republic, shall be held liable. In both cases, the perpetrator commits an offence where the sanction depends on the nature of the object of direct action. When the act concerns a currency in circulation, the statutory threat provides for life imprisonment (Art. 350 sentence 2 of the Cy.p.c.). If the offence concerns the currency of a foreign sovereign or a state, the perpetrator is punishable by seven years' imprisonment (Art. 350 sentence 3 of the Cy.p.c.). For the sake of order, it should be noted that in the scope of lack of authorization or justification of their behaviour, the burden of proof was shifted to the perpetrator.

As part of the last category, the forms of preparation for the counterfeiting of monetary tokens were distinguished (Art. 350 sentence 1 letter c items 3–5 of the Cy.p.c.). Anyone who, knowing the purpose of the means, without authorization or without justification of their act, performs, repairs, commences or prepares to execute or is in possession of: a stamp or die which is intended to imprint both or only one part of the currency (item 3); tools, instruments or machines which are intended to be used to mark the circumference of the coin with signs or designs which clearly resemble its external protection (item 4) or; a mint press or tool, instrument or machine prepared for cutting round pieces of gold, silver or other metal strips (die 5), is liable to prosecution. In each case, the perpetrator commits an offence punishable by a penalty, the limits of which are conditioned by the type of the object of the executive action. When the perpetrator affects the currency in circulation, the penalty is life imprisonment (Art. 350 sentence 2 of the Cy.p.c.). When the causative action is directed against the currency of a foreign sovereign or state, a penalty of seven years' imprisonment is provided for (Art. 350 sentence 3 of the Cy.p.c.).

C. Malta (Penal Code of 10 June 1854)[395]

The types relevant to the conducted considerations that interfere with the authenticity and credibility of circulating money should be sought in Part II – "On crimes and penalties", Title V – "On crimes against public trust", Subtitle I – "On the counterfeiting of securities, stamps and seals" and Subtitle III – "On currency counterfeiting".

[395] Kodiċi Kriminali, L-ORDNI FIL-KUNSILL tat-30 ta' Jannar, 1854, u ġie emendat bl-Ordinanzi: IV tal-1856 (source: https://legislation.mt/eli/cap/9/mlt/pdf [access: 1.12.2022]), hereinafter referred to as Ma.p.c.

These crimes can be divided into four categories. The first one may include types consisting of counterfeiting money (Art. 188B sec. 1 sentence 1 of the Ma.p.c., Art. 188B sec. 2 of the Ma.p.c., Art. 188E of the Ma.p.c. and Art. 188G sec. 1 sentence 1 of the Ma.p.c.) or securities (Art. 166 sections 1 and 3 of the Ma.p.c.). The second category consists of crimes of circulating counterfeit currency (Art. 188B sec. 1 sentence 2 of the Ma.p.c. and Art. 188G sec. 1 sentence 2 of the Ma.p.c.) or values (Art. 169 of the Ma.p.c.). As part of the third one, we find fencing of imitation monetary tokens (Art. 188C of the Ma.p.c. and Art. 188G sec. 1 sentence 3 of the Ma.p.c.). The last category includes preparatory activities for counterfeiting money (Art. 188D letters a–b and e–g of the Ma.p.c.).

Within the first category, we should analyse the type under Art. 188B sec. 1 sentence 1 of the Ma.p.c. Under that provision, criminal liability is imposed on anyone who, in order to commit fraud, counterfeits or alters any currency.[396] The implementation of elements of this type implies the threat of a sanction[397] in the form of imprisonment for a period not shorter than two years and not exceeding nine years. Next, comments are required to the act typified in Art. 188B sec. 2 of the Ma.p.c. On the basis of this provision, the production of any currency using legal devices or materials, but in violation of the rights and conditions under which these devices or materials are to be used has been criminalised. Committing a crime is liable to a penalty of imprisonment for a term of two to nine years. We find a specific type of money counterfeiting in Art. 188E of the Ma.p.c. The scope of the provision includes anyone who, without authorization or lawful or valid justification, cuts, tears, melts, destroys or punches any currency or in any way distorts the currency through writing, printing, drawing or stamping. The analysed act was penalized with a fine in the amount not exceeding one hundred and fifteen euros. A specific type of money counterfeiting is an act with the characteristics included in Art. 188G sec. 1 sentence 1 of the Ma.p.c. Pursuant to the provisions of Council Regulation (EC) No. 2182/2004 concerning medals and tokens similar to euro coins, any person who, without the authorisation of the Commission manufactures medals and tokens similar to euro coins shall be punishable by a fine of up to twenty-three thousand

[396] "Currency" means euro banknotes or coins or any other banknotes or coins, whatever their name might be, which are legal tender in the country in which they were issued (Art. 188A of the Ma.p.c.). The money is to be intended to put into circulation as a legal tender, even if it has not yet been formally issued and marketed.

[397] The catalogue of sanctions depends on the nature of the offence committed. Different consequences will be borne by those, who committed an offence (Art. 7 sec. 1 letters a–d of the Mo.p.c.), than those, who committed a misdemeanor (Art. 7 sec. 2 letters a–c of the Mo.p.c.). An offender may be sentenced to: imprisonment (letter a); isolation (letter b); restraining order (letter c); and fines (letter d). The perpetrators of misdemeanors may be sentenced to: arrest (letter a); fine (letter b); or reprimand or warning (letter c).

euros or by a sentence of up to six months' imprisonment or both. The above provision does not apply to medals and tokens minted, issued or produced before 6 December 2004 (Art. 188G sec. 2 of the Ma.p.c.). When it comes to criminal law protection against counterfeiting of securities, attention should be paid to Art. 166 sec. 1 of the Ma.p.c. Pursuant to the aforementioned provision, whoever falsifies the Government's obligation on account of loan sums granted to it (bonds), is liable to prosecution. The perpetrator is punishable by imprisonment for three to five years. However, if only the Government's bonds (guarantee) is covered by protection, the perpetrator can be sentenced for a term of thirteen months to four years' imprisonment (Art. 166 sec. 3 of the Ma.p.c.).

When discussing crimes of the second category, it is necessary to mention the act under Art. 188B sec. 1 sentence 2 of the Ma.p.c. Whoever, in order to commit fraud and knowing that the currency is inauthentic, uses counterfeit or altered money, is liable to prosecution. The implementation of element of this type implies the threat of imprisonment of two to nine years. It is worth noting that the Maltese legislator provided for a mitigated form of putting the imitation into circulation (Art. 188B sec. 3 of the Ma.p.c.). A circumstance in favour of more lenient liability is the trait of the subjective party, the so-called good faith of the marketer. Pursuant to that provision, where a counterfeit or altered currency is put into circulation by a person who proves that, at the time when it came into their possession, they were not aware of the originality, they shall be liable to imprisonment for a term of two months to three years. Another example of putting counterfeit money into circulation can be found in the content of Art. 188G sec. 1 sentence 2 of the Ma.p.c. Pursuant to the provisions of Council Regulation (EC) No. 2182/2004 concerning medals and tokens similar to euro coins, any person who, without the authorisation of the Commission, sells or distributes, for sale or other commercial purposes, medals and tokens similar to euro coins, shall be punishable by a fine of up to twenty-three thousand euros or by a sentence of up to six months' imprisonment or both. The above provision does not apply to medals and tokens minted, issued or produced before 6 December 2004 (Art. 188G sec. 2 of the Ma.p.c.). Mention should be made of circulating of counterfeit securities (Art. 169 of the Ma.p.c.). Pursuant to this provision, the scope of the criminalisation covers the conscious use in trade of counterfeit or altered liabilities of the Government for loan sums granted to it (bonds) or liabilities of the Government (guarantees). From the point of view of the statutory threat, the type was threatened with imprisonment for a term of three to five years.

The third category includes the type uder Art. 188C of the Ma.p.c. On the basis of the above provision, whoever, without authorization and being aware of the lack of its authenticity, imports, exports, transports, receives, obtains or possesses a counterfeit or reworked currency, will be held liable. Committing this act involves the threat of imprisonment for a period of not less than thirteen months and not

exceeding five years. What is specific is the prohibited act typified in Art. 188G sec. 1 sentence 3 of the Ma.p.c. Pursuant to the provisions of Council Regulation (EC) No. 2182/2004 concerning medals and tokens similar to euro coins, any person who, without the authorisation of the Commission imports medals and tokens similar to euro coins shall be punishable by a fine of up to twenty-three thousand euros or by a sentence of up to six months' imprisonment or both. It is worth stressing that the above provision does not apply to medals and tokens minted, issued or produced before 6 December 2004 (Art. 188G sec. 2 of the Ma.p.c.).

The last category is the implementation of preparatory activities for counterfeiting money (Art. 188D letters a–b and e–g of the Ma.p.c.). From the point of view of the model scheme of the internal structure, it is far from a synthetic approach. Under this provision, anyone who manufactures, produces, receives, obtains, uses or possesses: any paper intended to resemble and be regarded as special paper provided for and used in the issue of banknotes (letter a); any framework, form or instrument for the production of special paper or for the production on such paper of any words, figures, letters, characters or lines (letter b); any paper or other material on which words, figures, letters, holograms or other elements or protections are used to protect against fraud (letter e); instruments, articles, computer software and data, and any other means specially designed for counterfeiting or falsifying currency (letter f), and any matrix or other instrument or machine intended solely for minting coins (letter g), shall be liable to criminal prosecution. In each case, the type was penalized under penalty of imprisonment for a period of not less than thirteen months and not exceeding five years.

It is necessary to indicate a circumstance which is relevant for the correct interpretation of parts of the types in question. We are talking about Art. 188H of the Ma.p.c. Pursuant to this provision, Art. 121D of the Ma.p.c.[398] and Art. 248E sec. 4 of the Ma.p.c. shall apply *mutatis mutandis* to acts prohibited under penalty in Art. 188B–188D of the Ma.p.c.[399] The application of the above provisions leads to a subjective narrowing of the types of offences, creating individual offences.

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[398] To the extent relevant for our considerations, Art. 121D of the Ma.p.c. refers to liability for an offence committed by a person who, at the time of the offence, is a director, manager, secretary or other principal officer of a capital company or a person having the power to represent the company or to make decisions on behalf of the company or has the power to control activities within the company, and the offence was committed in whole or in part in the interest of or for the benefit of the capital company.

[399] In turn, in Art. 248E sec. 4 of the Ma.p.c., the conditions for the liability of a legal person for a prohibited act committed by a natural person have been included. It is indicated that the perpetrator should: at the time of committing the offence, be an employee of a legal person or be employed in its structures on another basis (letter a); commit an offence in the interest of or for the benefit of a legal person (letter b) or allow the commission of a prohibited act due to the lack of proper supervision or control in the structures of a legal person (letter c).

D. Turkey (Turkish Penal Code of 26 September 2004)[400]

Provisions typifying prohibited acts that undermine the monetary order of the state under Turkish legislation should be sought in Book Two – "Special Provisions", Part Three – "Crimes against society", Chapter Four – "Crimes against public trust".

Criminal offences can be classified into four categories. The first are the types of counterfeiting monetary tokens or securities (Art. 197 sec. 1 sentence 1 of the T.p.c. in connection with Art. 198 of the T.p.c.). The second category should include putting into circulation the imitation of money and its surrogates (Art. 197 sec. 1 sentence 2 of the T.p.c. in connection with Art. 198 of the T.p.c.). Under the third one, fencing of currency and securities counterfeits can be found (Art. 197 sec. 1 sentence 3 of the T.p.c. in connection with Art. 198 of the T.p.c.). The last one is the preparation for counterfeiting of currency and other values (Art. 200 of the T.p.c.). The institution of active repentance will also be taken into account (Art. 201 sections 1 and 2 of the T.p.c.).

Within the first category, we should analyse the act under Art. 197 sec. 1 sentence 1 of the T.p.c. According to the above-mentioned provision, whoever produces counterfeit money that is in circulation as a legal tender at home or abroad, is liable to prosecution.[401] The above act was penalized under the threat of a cumulative penalty[402] of fine[403]of up to ten thousand and imprisonment for a term of two to twelve years.[404] The Turkish legislator provided for liability for a mitigated type of counterfeiting money or its surrogates. In accordance with Art. 211 of the T.p.c., if the offence was committed in order to prove a claim resulting from a legal relationship or a documented factual situation, the penalty imposed shall be reduced by half.

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400 Türk Ceza Kanunu (source: https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf [access: 1.12.2022]), hereinafter referred to as T.p.c.

401 Pursuant to Art. 198 sec. 1 of the T.p.c., shares, bearer bonds, registered bonds and coupons issued by the government and bills of exchange in legal circulation and issued by authorized institutions have the legal force of money.

402 The list of penalties is included in Art. 45 sec. 1 of the T.p.c. This provision mentions the penalty of imprisonment (*sensu largo*) and fine.

403 Pursuant to Art. 52 sec. 1 of the T.p.c., a court fine consists in the payment by the convicted person to the State Treasury of an amount calculated as the product of the total number of rates (not less than five and not more than seven hundred and thirty) and an amount determined as the amount of a single rate. The amount of one rate is determined taking into account the economic and personal circumstances of the convicted person. It may not be lower than twenty or exceed one hundred Turkish liras (Art. 52 sec. 2 of the T.p.c.)

404 Variants of imprisonment are listed in Art. 46 sec. 1 letters a–c of the T.p.c. It refers to: aggravated life imprisonment (letter a); life imprisonment (letter b) and a term imprisonment (letter c). Analysing the last of the above – because it constitutes a sanction under the statutory threat – its dimension ranges from one month to twenty years (Art. 49 sec. 1 of the T.p.c.). Specific provisions may affect both the lower and upper limits of sanctions differently.

The second of the distinguished categories groups behaviours consisting in circulating counterfeits of money or securities. What requires our comment is Art. 197 sec. 1 sentence 2 T.p.c. On its basis, the responsibility will be borne by whoever brings into the territory of the country or puts into circulation counterfeit or processed money that remains in circulation as a legal tender in the country or abroad. In this case, the perpetrator faces a fine of up to twenty thousand and imprisonment for a term of two to twelve years.

Under the third category, we can find fencing of monetary tokens or their surrogates. Pursuant to Art. 197 sec. 1 sentence 3 of the T.p.c., criminal liability shall be borne by the perpetrator who transports counterfeited or altered money that is in circulation in the country or abroad as legal tender, or protects its condition from deterioration. Committing an act with such a structure of elements involves the threat of a fine of up to ten thousand and imprisonment for a term of to twelve years.

The last category includes the implementation of preparation for counterfeiting. Whoever produces, imports, sells, transfers, purchases, accepts or retains tools or materials used to produce money or securities without permission, falls within the scope of Art. 200 of the T.p.c. The commission of the act involves liability under penalty of a fine and imprisonment of not less than one year and not exceeding four years.

It is also necessary to mention the institution of active repentance. The Turkish legal system provides for two variations thereof. The consequence of their application is the same – the perpetrator is not punishable – but the scope of entities that benefit from them is different. In accordance with Art. 201 sec. 1 of the T.p.c., whoever in producing, placing on the market, transporting, storing or accepting counterfeit or processed money, before they are released into circulation and obtaining information about this fact by the competent authorities, will disclose to the law enforcement authority information about the accomplices or the place of their concealment, insofar as the information lead to their detention and seizure of counterfeits, will not be held liable. Whereas, in accordance with Art. 201 sec. 2 of the T.p.c., whoever in producing, importing, selling, transferring, acquiring, accepting or storing tools and materials used to counterfeit money or securities, shall disclose to the law enforcement authority information regarding the accomplices and the place where the tools and materials are produced or stored, insofar as these disclosures lead to their detention and seizure of materials, and were not known to the authority, is not liable to prosecution.

3. Summary

Comparative legal analysis allows for the formulation of several conclusions. The similarity of the regulations constituting the source of the reconstruction of the norms regarding the basis of criminal liability for counterfeiting and other behav-

iours related to the imitation of money or its surrogate is noticeable. This comment concerns countries closely related to each other and identical from the point of view of their legal culture.

Taking into account the implemented causative action, the scope of criminal law protection in individual countries of the European continent varies. In this context, it is possible to distinguish between countries that penalise:

1. Five behaviours, i.e. counterfeiting, removal of the sign of redemption, putting into circulation, behaviours enabling/preceding putting into circulation, preparation – Slovenia.

2. Four behaviours, i.e. counterfeiting, putting into circulation, behaviours enabling/preceding putting into circulation, preparation – Slovakia, Latvia, Italy, San Marino, the Netherlands, Monaco, Spain, Portugal, Germany, Austria, Switzerland, Liechtenstein, Norway, Finland, Estonia, Brčko District, Kosovo, Serbia, Montenegro, Romania, Bulgaria, North Macedonia, Greece, Cyprus, Malta, Turkey.

3. Three behaviours, i.e. counterfeiting, putting into circulation, behaviour enabling/preceding putting imitation into circulation – Belarus, Russia, Lithuania, Denmark, Sweden, Bosnia and Herzegovina; i.e. counterfeiting, putting into circulation, preparation – Hungary, Andorra, Croatia, Albania.

4. Two behaviours, i.e. counterfeiting and putting into circulation – Belgium, Luxembourg, Iceland, Moldova; i.e. counterfeiting and behaviours enabling/preceding the release of imitations into circulation – Ukraine.

In addition, a distinction can be made taking into account the object of the executive activity. Comments in this regard will be made in two ways. Firstly, given the type of carrier of the legal good targeted by the causal attack. In the second case, the differentiating element will be the nature of the object of direct action.

Referring to the first of the distinctions, we should note that it is based on the scope of criminal law protection awarded to the objects of the enforcement activity in individual countries. Two categories of countries can be distinguished. The first includes those in which only money is protected (the Netherlands, France, Norway, Sweden, Cyprus). The second category includes these countries where the content of the provision refers to both money and other legal tenders (the Czech Republic, Slovakia, Hungary, Ukraine, Belarus, Russia, Lithuania, Italy, San Marino, Belgium, Luxembourg, Andorra, Spain, Portugal, Germany, Austria, Switzerland, Liechtenstein, Denmark, Iceland, Estonia, Slovenia, Croatia, Bosnia and Herzegovina, Brčko District, Kosovo, Serbia, Montenegro, Romania, Moldova, Bulgaria, North Macedonia, Albania, Greece, Malta and Turkey). This does not necessarily mean ensuring the same criminal law protection from the point of view of its intensity. It happens that attacks, the object of which are other legal tenders, are more leniently penalized than the same behaviours directed against fiat money (e.g. Germany, Austria).

Speaking of the latter, there is a consensus in Europe on the need to ensure the same protection by means provided for by criminal law against attacks on domestic money and its surrogates as well as foreign means. This is the dominant view. The only exception can be found in the legislation of Cyprus, where the preferred uniformity was abandoned. Of course, the priority in this case was given to domestic legal tender.

When modeling the basics of criminal liability for money counterfeiting, it is worth paying attention to the distinction in the subjective side of types. It is worth pointing out two categories of countries. The first includes those countries that recognize counterfeiting as a deliberate offence, but not in its directional form (Ukraine, Belarus, Lithuania, Latvia, Italy, San Marino, Belgium, Luxembourg, France, Monaco, Spain, Sweden, Romania, Bulgaria, Albania, Cyprus and Turkey). The second group of countries includes those that qualify money counterfeiting as a type with directional provenance (the Czech Republic, Slovakia, Hungary, Russia, the Netherlands, Andorra, Portugal, Germany, Austria, Switzerland, Liechtenstein, Denmark, Iceland, Norway, Finland, Slovenia, Croatia, Bosnia and Herzegovina, Brčko District, Kosovo, Serbia, Montenegro, North Macedonia, Greece and Malta). The Moldovan approach is peculiar in this respect, i.e. a legislator who, in respect of counterfeiting of other legal tenders, creates a directional type when the counterfeit is devoid of the characteristic corresponding to *dolus directus coloratus*.

Most of the examined legal systems feature aggravated types of counterfeiting. The constituent elements that modify individual prohibited acts in terms of increasing the quantum of their lawlessness include:

1. Circumstances individualizing the type from the point of view of the subject of the crime:
   a) member of an organized criminal/dangerous group – the Czech Republic, Slovakia, Hungary, Ukraine, Belarus, Russia, Latvia, Andorra, Germany, Liechtenstein, Monaco, Moldova,
   b) public official or employee – Moldova.
2. Scale and nature of the causative action:
   a) the scale of the act:
      – significant size/scale – the Czech Republic, Slovakia, Hungary, Finland,
      – large scale of the act – Slovakia, Ukraine, Russia, Latvia, Estonia, Slovenia,
      – particularly large scale / particularly serious character – Slovakia, Ukraine, Belarus, Denmark, Norway, Moldova,
      – great scale of the act – the Czech Republic,
      – a particularly large or larger amount of money – Hungary,
      – commercial scale – Hungary,
   b) seriousness – Sweden,

c) activity in the territory of several countries – the Czech Republic,
d) repeated offence / systematic approach of the offender – Ukraine, Belarus, Finland, Estonia,
e) permanent profession / professional character – Andorra,
f) in connection with the profession – the Czech Republic.

3. Number of counterfeits or their nominal value – Kosovo:
a) which is sufficient to destabilize the economic system – Andorra,
b) particularly large / large number of imitations – Moldova, Lithuania, Slovenia,
c) large value of counterfeit – Lithuania,
d) exceeding the specified nominal value of the counterfeit – Austria, Switzerland, Liechtenstein, Kosovo, Serbia, Montenegro.

4. The consequence of the prohibited act:
a) drop in prices of currency or government bonds – Italy,
b) threat to the amount of debt installments on the domestic or foreign market – Italy,
c) disturbance of the country's economy – Bosnia and Herzegovina, North Macedonia.

5. Property benefit and its size – Brčko District, Serbia, Montenegro.

6. Specific motivation of the perpetrator – Slovakia:
a) the objective of obtaining benefits – Brčko District,
b) the objective of obtaining a property benefit – Germany, Leichtenstein.

A significant number of the legal systems of individual countries have found some acts to be characterized by lower quantum of lawlessness. This means that it is necessary to determine the circumstances mitigating the behaviour of the perpetrator. These include:

1. The object of the executive action:
a) money that has not yet obtained the status of a legal tender – Italy,
b) money that has lost its legal tender status – Belgium, France,
c) money with a reduced nominal value – Italy, Iceland.

2. Minor case – Germany, Switzerland, Sweden, Greece.

3. Method of carrying out the causative action, i.e. bringing about a reduction in the nominal value of money – Italy.

4. A small amount and/or value of the counterfeit currency, the benefit obtained or the damage caused – Finland, Kosovo.

5. Specific motivation of the offender:
a) in order to prove a claim arising from a legal relationship or a documented factual situation – Turkey,
b) good faith – Kosovo, Malta, Iceland,
c) acceptance of counterfeit money as authentic – Switzerland.

On the other hand, the legislation of Italy, San Marino, Luxembourg, France, Monaco, Germany, Austria, Liechtenstein, Sweden, Bulgaria, Greece and Turkey provides for a special arrangement to refrain from punishing the perpetrator. We are talking about an institution of active repentance provided for the perpetrators of the types of prohibited acts in question.

Summing up the considerations in this part of the work, it is worth trying to formulate a few preliminary conclusions. Against the presented background, the Polish regulations contained *in gremio* in Art. 310 of the Polish Penal Code do not constitute original criminal law solutions. In the domestic normative constructions, we can find some similarities to analogous institutions provided for in the Germanic legal system. This is particularly clear in the elementary attachment to the level of manufactured imitation, which is to determine responsibility for counterfeiting, and in the relatively severe sanctions for committing the title offences. There is also a solution close to many countries regarding the obligatory adjudgment of the forfeiture of items. The national solution fits into the widest possible scope of criminalizing the activities of the perpetrators, which are directed against the regularity of trading money and its surrogates.

The results of the analyses confirm the adopted *de lege ferenda* postulates. They will concern the need for legislative modifications of the regulations included in the framework of Chapter XXXVII of the Polish Penal Code. In particular, we are talking about changes in the scope of the statutory threat of sanctions. It is worth emphasizing the fundamental doubts about the inspiration for special constructs of not punishing the perpetrator. Such solutions, which occur in individual countries, are striking examples of casuistry. Therefore, the general regulation of active repentance (effective and ineffective) provided for in Art. 15 § 1 and 2 of the p.c., appears to be adequate and sufficient.[405] I will come back to these issues, as part of the summary of all the ongoing considerations.

[405] M. Błotnicki, *Problems of voluntariness on the grounds of active regret – selected issues against the background of liability for counterfeit money*, „Prawnik", 2022, vol. 57(3), pp. 12–16.

CHAPTER II

Statutory Elements of a Prohibited Act Pursuant to Art. 310 § 1 of the Polish Penal Code

1. Introductory remarks

An analysis of the type of counterfeiting, alteration or removal of a sign of redemption from money or a monetary token established as a legal tender, but not put into circulation, will be carried out to the extent necessary to present the differences occurring in Poland compared to the European model. The argument was conducted in accordance with the system of constituent elements prevailing in the doctrine. It covers statutory characteristics of human behaviour, the occurrence of which determines its classification as a criminal offence.[406] This will be a structural

[406] M. Mozgawa, [in:] M. Mozgawa (red.), *Kodeks karny. Updated comment*, LEX/el art. 1, teza 3; A. Grześkowiak, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks karny. Komentarz*, Warszawa 2021, pp. 21–40; M. Królikowski, M. Gałęski, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część ogólna. Komentarz do artykułów 1–116*, Warszawa 2021, p. 98 et seq.; J. Giezek, [in:] J. Giezek (red.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa 2021, pp. 31–32; J. Lachowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks karny. Komentarz*, Warszawa 2020, pp. 37–40; Ł. Pohl, [in:] R.A. Stefański (red.), *Kodeks karny. Komentarz*, Warszawa 2018, pp. 38–46; A. Zoll, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część ogólna. Tom I. Część I, Komentarz do art. 1–52*, Warszawa 2016, pp. 30–41; A. Wąsek, M. Kulik, [in:] M. Filar (red.), *Kodeks karny. Komentarz*, Warszawa 2016, pp. 35–36; T. Bojarski, [in:] T. Bojarski (red.), *Kodeks karny. Komentarz*, LEX/el art. 1 teza 2; A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, pp. 17–24; B. Kunicka-Michalska, *Zasady odpowiedzialności karnej. Komentarz do art. 1–7 Kodeksu karnego*, Warszawa 2006, pp. 65–76; A. Wąsek, [in:] O. Górniok et al., *Kodeks karny. Komentarz*, Gdańsk 2005, p. 796; J. Piórkowska-Flieger, *Skutek czynu zabronionego w polskim prawie karnym*, Lublin 2019, pp. 61–62; Sz. Tarapata, *Dobro prawne w strukturze przestępstwa. Analiza teoretyczna i dogmatyczna*, Warszawa 2016, pp. 224–262; P. Kardas, *O relacjach między strukturą przestępstwa a dekodowanymi z przepisów prawa karnego strukturami normatywnymi*, „CzPKiNP" 2012, vol. 4, pp. 5–63; P. Konieczniak, *Czyn jako podstawa odpowiedzialności w prawie karnym*, Kraków 2002, pp. 232–243; A. Gubiński, *Zasady prawa karnego*, Warszawa 1996, p. 45; R. Dębski, *Pozaustawowe znamiona przestępstwa.*

division, corresponding to the classic "quadriga" – taking into account the character of: the objective, the objective side, the subject and the subjective side. The selection was dictated by its applicability in the practice of applying the law[407] and its almost universal[408] recognition in theoretical and dogmatic considerations.[409] Moreover, its use makes it possible to clearly cover issues related to the type of offence.

O ustawowym charakterze norm prawa karnego i znamionach typu czynu zabronionego nie określonych w ustawie, Łódź 1995, p. 76 et seq.; K. Buchała, *Prawo karne materialne*, Warszawa 1980, p. 196; W. Świda, *Prawo karne*, Warszawa 1989, p. 117; idem, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo karne. Część szczególna*, Wrocław – Warszawa 1980, p. 15; A. Zoll, *Okoliczności wyłączające bezprawność czynu*, Warszawa 1982, p. 22; idem, *Stosunek kontratypów do ustawowej określoności czynu*, „PiP" 1975, z. 10, p. 83; I. Andrejew, *Podstawowe pojęcia nauki o przestępstwie*, Warszawa 1980, p. 130; idem, *Ustawowe znamiona czynu. Typizacja i kwalifikacja przestępstw*, Warszawa 1978, p. 71; idem, *„Ustawowe znamiona" w doktrynie i nowych kodeksach*, [in:] J. Fiema (red.), *Księga pamiątkowa ku czci prof. dr. Witolda Świdy*, Warszawa 1969, p.17; idem, *Ustawowe znamiona przestępstwa*, Warszawa 1959, p. 5; T. Florek, *Typizacja czynu – pojęcie, zakres i funkcja*, „ZNUJ" 1977, z. 74, p. 26; W. Wolter, *Nauka o przestępstwie*, Warszawa 1973, p. 90 et seq.; idem, *Funkcja błędu w prawie karnym*, Warszawa 1965, pp. 54–55; T. Kaczmarek, *Materialna istota przestępstwa i jego znamiona*, Warszawa 1968, p. 41; S. Śliwiński, *Polskie prawo karne materialne. Część ogólna*, Warszawa 1946, pp. 133–140; S. Glaser, *Nauka o istocie czynu*, „Gazeta Sądowa Warszawska" 1934, vol. 6, p. 82; idem, *Polskie prawo karne w zarysie*, Kraków 1933, p. 103 et seq.; E. Krzymuski, *System prawa karnego ze stanowiska nauki i trzech kodeksów obowiązujących w Polsce. Część I ogólna*, Kraków 1921, p. 42; idem, *Wykład prawa karnego ze stanowiska nauki i prawa austriackiego*, Kraków 1901, p. 133. In the context of the signaled issue, analogous views were expressed on the basis of Germanic literature; for a summary see E. Beling, *Die Lehre vom Tatbestand*, Tübingen 1930, pp. 5–6; idem, *Die Lehre vom Verbrechen*, Tübingen 1906, pp. 3–21.

[407] Resolution of the SC of 27 October 2017, ref. SNO 38/17, LEX No. 2428279; Resolution of the SS of 30 March 2012, ref. SNO 6/12, LEX No. 1215816; Judgment of the SC of 18 August 2010, ref. WA 16/10, OSNwSK 2010, No. 1, item 1577; Judgment of the SC of 17 December 2008, ref. III KK 372/08, LEX No. 491431; Judgment of the SC of 17 December 2008, ref. III KK 372/08, LEX No. 491431; Judgment of the SC of 15 May 2000, ref. V KKN 390/00, LEX No. 50990; Judgment of the SC of 4 April 2000, ref. II KKN 335/99, LEX No. 50896.

[408] Cieślak and Bafia reject the distinguished systematics, see M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1994, p. 222; J. Bafia, *Polskie prawo karne*, Warszawa 1989, pp. 106–108. Cieślak expressed reservations regarding the indicated division. The argumentation indicated by this author does not undermine the basic assumptions related to the above systematics, see W. Cieślak, *Wymuszenie rozbójnicze*, Kraków 2000, pp. 51–52. Also noteworthy is the systematics used by Zoll, within which the constituent elements of the object of protection, the objective side and the subjective side were distinguished, see K. Buchała, A. Zoll, *Polskie prawo karne*, Warszawa 1995, p. 142.

[409] L. Gardocki, *Prawo karne*, Warszawa 2002, p. 25; H. Maliszewska, [in:] J. Waszczyński (red.), *Prawo karne w zarysie. Nauka o ustawie karnej i przestępstwie*, Łódź 1992, pp. 104–105; W. Świda, *Prawo…*, *op. cit*., p. 117; idem, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit*., p. 6.

2. The object of criminal law protection

§ 1. The generic object of protection of crimes against trading of money and securities

The generic object of protection should be located between the general and specific approach. Speaking on this subject, Szymon Tarapata makes an accurate diagnosis, indicating that "it is more specific than a general one, and at the same time more general than the direct one. It can be included in several degrees of concretization, as it shifts from a general to a direct object of protection".[410] Moreover, it is argued that the common good is a generic object of protection for a particular set of regulations.[411] The above statement opens the way for detailed analyses of the group object of protection. Four basic categories can be indicated, around which the arguments of the representatives of the doctrine oscillate, aimed at the characteristics of the good/goods constituting the generic object of protection. The indicated number is only of a contractual nature. It is a kind of "taking out in front of the bracket" of the views expressed in the subject literature and putting them into the framework of general models. There is no doubt that on the basis of each of the categories, we can distinguish several subcategories describing common values for the provisions of Chapter XXXVII of the p.c.

The group of values included in the first category can be reduced to the need to protect legal and economic turnover or its bases.[412] A separate category devoted to the values common to the types from Chapter XXXVII of the Penal Code is the recognition that the provisions grouped therein protect property.[413] Another group of views is the recognition that the foundations of the economic system are the protected value under all the provisions of Chapter XXXVII of the p.c.[414] The

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[410] Sz. Tarapata, *Dobro…*, *op. cit.*, p. 114.

[411] For summary see: A. Gubiński, *Zasady…*, *op. cit.*, p. 49; S. Glaser, *Polskie…*, *op. cit.*, pp. 311–312.

[412] J. Śliwowski, *Prawo karne*, Warszawa 1979, p. 486; T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks karny. Komentarz*, Warszawa 2020, p. 1422; Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna. Tom III. Komentarz do art. 278–363 k.k.*, Warszawa 2022, p. 931, 953; J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 772.

[413] G. Łabuda, [in:] J. Giezek (red.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa 2021, p. 1512.

[414] J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks karny. Część szczególna. Komentarz do artykułów 222–316, t. II*, Warszawa 2010, p. 1601; idem, *Przestępstwa przeciwko obrotowi pieniędzmi i papierami wartościowymi. Rozdział XXXVII Kodeksu karnego. Komentarz*, Warszawa 2002, p. 13; O. Górniok, *Przestępstwa gospodarcze. Rozdział XXXVI i XXXVII Kodeksu karnego. Komentarz*, Warszawa 2000, p. 121; cf. M. Jachimowicz, *Podrabianie lub przerabiania urzędowych znaków wartościowych*, „Prokurator" 2008, vol. 1, pp. 96–98.

most complex in scope is the fourth category of views that can be standardised, by assuming that the generic object of protection is the basis for trading in money, other legal tenders, securities, official tokens, official marks or legalised measurement or testing tools.[415] Some representatives of the doctrine consider the authenticity and reliability of Polish or foreign money, other legal tenders, a security, an official token, an official mark, or a measuring or testing tool[416] to be the generic object of protection. Some theoreticians point to public trust or confidence in traded money, other legal tenders, a security, an official token, an official mark, or a measuring or testing tool.[417] This makes it possible to further narrow down this good by clarifying that the generic object of protection is trust in the authenticity of those values.[418] The specific characteristics of money, other legal tenders, securities, official marks, or measuring or testing tools, in the form of their ability to remain on the market before counterfeiting or removal of signs of their redemption, are also indicated.[419]

Summing up the presented opinions on the good constituting the generic object of protection, one should express concern about the discrepancies arising in this background.[420] The presentation of the author's position should be preceded by an analysis of the guidelines provided by the models of responsibility for crimes against money used on the European continent. Some states – without reference in the title of the chapter to a specific legal good – treat the act in question as a counterfeiting *per se* or an aggravated form of forgery. This approach can be observed in the legal orders of Hungary, the Netherlands, Spain, Germany, Switzerland, Iceland, Sweden, Croatia, Romania, Albania and Cyprus. However, some of the European legislators,

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[415] J. Skorupka, *Przedmiot ochrony przestępstwa z art. 310 § 1 K.K.*, „Pal." 2002, z. 7–8, p. 63 et seq.; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 771.

[416] Z. Siwik, [in:] M. Filar (red.), *Kodeks karny. Komentarz*, Warszawa 2016, p. 1645; R. Zakrzewski, *Przestępstwa przeciwko obrotowi pieniędzmi i papierami wartościowymi*, „MOP" 1998, z. 12, pp. 1–3; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz do ustawy o ochronie obrotu gospodarczego*, Warszawa 1995, p. 219; A. Krukowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (red.), *System Prawa Karnego. Tom IV*, *Część 2, O przestępstwach w szczególności*, Wrocław – Warszawa – Kraków – Gdańsk – Łódź 1989, p. 519; W. Wolter, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks karny z komentarzem*, Warszawa 1973, p. 723; W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 416; J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 766.

[417] J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1819; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 219; W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 416.

[418] J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1602; idem, *Przestępstwa…*, *op. cit.*, pp. 13–14.

[419] *Ibidem*; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 219.

[420] J. Piórkowska-Flieger, *Prawne i społeczne uzasadnienie karalności fałszu dokumentu*, „SIL" 2003, vol. 1, pp. 146–150.

define the protected value in the very title of the chapter. In this context, six separate approaches to the topic can be distinguished. According to the first, the counterfeiting of money is an attack on the financial system. Such perception can be seen in the legal orders of Lithuania and North Macedonia. According to the second concept, public faith or public order is the value protected by a provision that typifies the chapter (Italy, Belgium, Luxembourg, Estonia, Malta and Turkey).[421] In a similar way, money counterfeiting is interpreted in Monaco and Portugal, where this act constitutes a crime against the public good. The fourth approach indicates that the generic object of protection is the monetary turnover. This is the case in Denmark, Finland, Greece and Montenegro. According to the fifth concept, it is assumed that a counterfeiter of money acts against the state (San Marino and France). However, the most widespread view is that the counterfeiting money is an attack on economic turnover (the Czech Republic, Slovakia, Ukraine, Belarus, Russia, Andorra, Austria, Liechtenstein, Norway, Slovenia, Bosnia and Herzegovina, Brčko District, Kosovo, Serbia, Moldova and Bulgaria).

It is worth pointing out that the previous considerations of the representatives of the doctrine, due to their fragmentary approach and contributory nature, can only constitute the basis for conducting our own analyses, aimed at decoding the legal good common to the group of crimes. It is necessary to exclude from the group of values included in the generic object of protecting the proper functioning of trading in money and securities, or economic turnover as such. This is a certain objective and postulate assumed by the legislator, rather than a value subject to criminal law protection. By reference to the regularity of trading, the legislator aims to reduce the risk of irregularities on the financial market, i.e. non-compliance with the provisions of applicable law. We can speak about regularity when the ability of the financial market to perform its intended functions has been duly secured.[422] However, this does not mean that the regularity of trading should constitute a good requiring criminal law protection on the grounds of crimes "against the trading of money and securities".

The starting point for further considerations should be the assumption that the high degree of social harm of the offences typified in Chapter XXXVII of the p.c. results from the fact that the perpetrator's act is an attack on a legal good of a specific type. It constitutes a breach of the normative foundations of the functioning of the financial system.[423] An attempt to define the financial system should start with

[421] K. Krężlewicz, *Fałszowanie oznaczeń autorstwa w starożytnym Rzymie a ustawa Lex Cornelia de Falsis*, „ZP" 2014, vol. 14(3), p. 152.

[422] P. Wajda, *Efektywność informacyjna rynku giełdowego*, Warszawa 2011, p. 128.

[423] M. Wierzbowski, P. Wajda, [in:] L. Sobolewski, M. Wierzbowski, P. Wajda (red.), *Prawo rynku kapitałowego. Komentarz*, Warszawa 2019, pp. 405–406; D. Dziawgo, *Rynek finansowy. Istota – instrumenty – funkcjonowanie*, Warszawa 2012, p. 12; A. Tomaszewski, *Giełda Papierów*

paying attention to the content of Art. 1 NadzRynkFinU.[424] Under that provision, supervision of the financial market includes banking supervision, pension supervision, insurance supervision, capital market supervision, supervision of payment institutions, credit rating agencies, financial conglomerates, cooperative savings and credit unions, and mortgage intermediaries and agents.[425] On the other hand, pursuant to Art. 2 of the NadzRynkFinU, the subject literature indicates that the scope of supervisory competences of the Polish Financial Supervision Authority was usually referred to as the financial market.[426] Such a broad approach, derived from the sphere of the *imperium* of the supervisory activity of the competent state authority, would not be useful in considerations in the field of criminal law theory and requires further narrowing. If one takes into account the spectrum of objects of executive activities of the types from Chapter XXXVII of the p.c., such a multifaceted definition of the subject of protection common to them would deprive the institution of its essential functions and would exclude the achievement of the objectives assumed by the legislator. What could be of relevance from this point of view is a clear definition of the carriers of the legal good to which the attack of the perpetrator is directed.

Since the financial system is characterised by behaviour and activities characterised by public trust, the high reprehensibility of acts constituting attacks on its basis is justified by undermining trust in the normative foundations of the system.[427] Such a view of the generic object of protection in relation to the types from the chapter entitled

Wartościowych w Warszawie SA, [in:] A. Szelągowska (red.), *Instytucje rynku finansowego w Polsce*, Warszawa 2007, pp. 332–336; A. Sławiński, *Rynki finansowe*, Warszawa 2006, pp. 9–19; W.L. Jaworska, Z. Zawadzka, *Bankowość*. Warszawa 2001, pp. 207–220; Z. Fedorowicz, *Rynek pieniądza i rynek kapitału*, Warszawa 1999, pp. 22–28; P. Wajda, *Efektywność…*, *op. cit.*, pp. 18–21.

[424] The Act of 21 July 2006 on financial market supervision (Journal of Laws of 2006, No. 157, item 1119 as amended).

[425] P. Zawadzka, [in:] R. Mastalski, E. Fojcik-Mastalska (red.), *Prawo finansowe*, Warszawa 2011, pp. 476–477; M. Lemmonier, *Europejskie modele instrumentów finansowych. Wybrane zagadnienia*, Warszawa 2011, p. 219; I. Pyka, [in:] I. Pyka (red.), *Rynek finansowy*, Katowice 2010, p. 9; A. Jurkowska-Zeidler, *Bezpieczeństwo rynku finansowego w świetle prawa Unii Europejskiej*, Warszawa 2008, pp. 23–24.

[426] M. Spyra, [in:] M. Stec (red.), *System Prawa Handlowego, t. 4: Prawo instrumentów finansowych*, Warszawa 2016, p. 9; B. Wojno, [in:] L. Sobolewski, M. Wierzbowski, P. Wajda (red.), *Prawo…*, *op. cit.*, p. 1649 et seq.

[427] The normative foundations of the system should be understood as the general legal relations, moral and customary norms, arising in connection with activities in the financial system in the form of factual or legal acts, see M. Klubińska, *Przestępstwo oszustwa gospodarczego z art. 297 k.k.*, Warszawa 2014, p. 193; P. Ochman, *Ochrona działalności bankowej w prawie karnym gospodarczym. Przepisy karne ustaw bankowych*, Warszawa 2011, p. 105; J. Skorupka, *Pojęcie przestępstwa gospodarczego*, [in:] V. Konarska-Wrzosek, J. Lachowski, J. Wójcikiewicz (red.), *Węzłowe problemy prawa karnego, kryminologii i polityki kryminalnej. Księga pamiątkowa ofiarowana Profesorowi Andrzejowi Markowi*, Warszawa 2010, p. 501; W. Pawełko, *Zapobieganie*

"Crimes against trading in money and securities" seems to give it an operative character on the basis of further analyses. Moreover, the need to recognise the legal good common to the types from Chapter XXXVII of the p.c.[428] in this manner results from the mutual relations between the proper functioning of the financial market and the economic security of the state.[429] It seems clear that undermining the presumption of security, stability and confidence in the financial system can lead to negative developments in the market, creating undesirable behaviour on the part of its participants.[430]

Indeed, the security of the financial system must relate to trading on the financial market. On the other hand, the analysis of this criterion should be carried out pri-

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przestępstwom gospodarczym, Warszawa 1971, pp. 14–15; T. Cyprian, *Przestępstwa gospodarcze*, Warszawa 1960, p. 43.

[428] P. Ochman, *Karnoprawna ochrona podejmowania działalności finansowej*, „RPEiS" 2016, z. 2, pp. 161–163; idem, *Rola Komisji Nadzoru Finansowego w karnej ochronie rynku finansowego*, „IN" 2016, z. 4, p. 327 et seq.; idem, *Karnoprawna ochrona rynku kapitałowego w świetle kryminalizacji bezprawnego prowadzenia działalności w zakresie obrotu instrumentami finansowymi*, „NKPK" 2015, t. XXXVI, pp. 13–17; idem, *Karnoprawna ochrona rynku kapitałowego. Przepisy karne ustaw polskiego rynku kapitałowego*, London 2014, pp. 46–49; K. Baniak, *Formy ochrony rynku kapitałowego w polskim ustawodawstwie*, „Przegląd Prawniczy Uniwersytetu Warszawskiego" 2007, z 1, p. 8; R. Zawłocki, *Przestępstwa przeciwko obrotowi finansowemu. Przepisy karne z ustaw finansowych. Komentarz*, Warszawa 2002, p. 31; R. Kuciński, *Przestępstwa giełdowe*, Warszawa 2000, p. 47.

[429] A. Jurkowska-Zeidler, *Status prawny Komisji Nadzoru Finansowego jako organu administracji publicznej w świetle wyroku Trybunału Konstytucyjnego z dnia 15 czerwca 2011 roku*, „GSP" 2012, z. 28, pp. 145–153; M. Dyl, *Środki nadzoru na rynku kapitałowym*, Warszawa 2012, pp. 95–103; A. Nadolska, *Komisja Nadzoru Finansowego w nowej instytucjonalnej architekturze Europejskiego Nadzoru Finansowego*, Warszawa 2014, pp. 245–260; T. Nieborak, *Status prawny Komisji Nadzoru Finansowego w świetle orzeczenia Trybunału Konstytucyjnego z dnia 15 czerwca 2011 roku (sygn. K 2/09)*, [in:] L. Etel, M. Tyniewicki (red.), *Finanse publiczne i prawo finansowe. Realia i perspektywy zmian. Księga jubileuszowa dedykowana Profesorowi Eugeniuszowi Ruśkowskiemu*, Białystok 2012, pp. 573–582; Sz. Pawłowski, *Pozycja ustrojowa Komisji Nadzoru Finansowego*, [in:] P. Radziewicz (red.), *Aktualne problemy konstytucyjne w świetle wniosków, pytań prawnych i skarg konstytucyjnych do Trybunału Konstytucyjnego*, Warszawa 2010, pp. 11–23; C. Kosikowski, M. Olszak, [in:] J. Głuchowski (red.), *System prawa finansowego, t. 4: Prawo walutowe. Prawo dewizowe. Prawo rynku finansowego*, Warszawa 2010, p. 217; C. Kosikowski, J. Matuszewski, [in:] C. Kosikowski (red.), *System prawa finansowego. Tom 1: Teoria i nauka prawa finansowego*, Warszawa 2010, pp. 15, 32–33; M. Zdebel, [in:] J. Głuchowski, C. Kosikowski, J. Szołno-Koguc (red.), *Nauka finansów publicznych i prawa finansowego w Polsce. Dorobek i kierunki rozwoju. Księga jubileuszowa Profesor Alicji Pomorskiej*, Lublin 2008, pp. 56–65; M. Dusza, *Rynek kapitałowy w procesie transformacji systemowej w Polsce*, „BiK" 1995, z 6, p. 17.

[430] R. Kaszubski, A. Tupaj-Cholewa, *Prawo bankowe*, Warszawa 2010, p. 195; O. Szczepańska, *Stabilność finansowa jako cel banku centralnego. Studium teoretyczno-porównawcze*, Warszawa 2008, p. 42; L. Góral, *Nadzór bankowy*, Warszawa 1998, p. 28; J. Świderski, *Finanse banku komercyjnego*, Warszawa 1998, p. 8; C. Kosikowski, *Doktrynalne i normatywne koncepcje prawa bankowego*, „BiK" 1993, z. 2, p. 2.

marily from the perspective of its participants.[431] The above-mentioned point of view results from the need to ensure the protection of the interests of the weaker side of financial trading and to guarantee the stable and proper functioning of the economy. That boils down, in particular in the context of the types of Chapter XXXVII of the p.c., to the conclusion that relations arising within the financial system cannot be left solely to the rights of the free market. In this context, the provision of public authorities, using specific instruments, with the minimum necessary corrections and interventions[432] should be regarded as indispensable. Moreover, the postulate of ensuring security, as the basis of the financial system on the basis of a generic subject of protection, can be reduced to the need to protect its certainty and credibility by taking care of the money, monetary tokens, other legal tenders, securities, official securities, official marks, measuring or testing tools that are in circulation.

Next, it should be noted that on the basis of a generic object, it was considered necessary to adopt stability protection as the basis of the financial system. In this respect, too, it is necessary to clarify and further narrow down, because in relation to the offences grouped in Chapter XXXVII of the p.c., stability as a postulate and value will be discussed at the same time in relation to cash, capital and economic turnover.[433] Stability is recognised as the essential feature of the financial system.[434]

[431] B. Wojno, [in:] L. Sobolewski, M. Wierzbowski, P. Wajda (red.), *Prawo…*, *op. cit.*, p. 1659.

[432] P. Wajda, *Rola decyzji administracyjnej w nadzorze nad polskim systemem finansowym*, Warszawa 2009, pp. 123–124; B. Wojno, [in:] L. Sobolewski, M. Wierzbowski, P. Wajda (red.), *Prawo…*, *op. cit.*, p. 1650.

[433] J. Jastrzębski, *Transgraniczne aspekty obowiązków informacyjnych na rynku kapitałowym*, „ESP" 2014, z. 6, pp. 20–21; S. Flejterski, [in:] J. Nowakowski, T. Famulska (red.), *Stabilność i bezpieczeństwo systemu bankowego*, Warszawa 2008, pp. 17–18; A. Chłopecki, *Publiczny obrót i instrumenty finansowe – redefiniowanie podstawowych pojęć prawa rynku kapitałowego*, „PPH" 2005, z. 11, p. 38 et seq.; idem, *Obrót papierami wartościowymi na rynku kapitałowym, cz. 2*, „PPH" 1995, z. 9, p. 17 et seq.; idem, *Obrót papierami wartościowymi na rynku kapitałowym, cz. 1*, „PPH" 1995, z. 8, p. 12 et seq.; A. Bielecka-Dobroczek, *Mechanizm transakcji papierami wartościowymi na rynku regulowanym*, „Zeszyty Prawnicze UKSW" 2005, vol. 5(2), p. 117 et seq.; O. Szczepańska, P. Sotomska-Krzysztofik, M. Pawliszyn, A. Pawlikowski, *Instytucjonalne uwarunkowania stabilności finansowej na przykładzie wybranych krajów*, Warszawa 2004, p. 5 et seq.; J. Majewski, *Przestępne wprowadzenie papierów wartościowych do publicznego obrotu*, „PPW" 2001, z. 5, pp. 20–21; idem, [in:] O. Górniok (red.), *Pawo karne…*, *op. cit.*, p. 272; T. Krawczyk, *Problematyka przedmiotu ochrony art. 175 i 176 Prawa o publicznym obrocie papierami wartościowymi kryminalizujących praktyki insider trading*, „Prok. i Pr." 2000, z. 9, pp. 62–66; M. Michalski, *Szczególna regulacja odnosząca się do akcji jako przedmiotu obrotu publicznego*, „Glosa" 2000, vol. 1, pp. 8–9; M. Romanowski, *Pojęcie publicznego obrotu papierami wartościowymi*, „PPH", 1998, z. 5, p. 11 et seq.; R. Zakrzewski, *Przestępstwa przeciwko obrotowi pieniędzmi i papierami wartościowymi*, „MOP", 1998, z. 12, pp. 1–3; A. Jurkowska-Zeidler, *Bezpieczeństwo…*, *op. cit.*, pp. 7–22; O. Szczepańska, *Stabilność…*, *op. cit.*, pp. 50–65.

[434] B. Pietrzak, [in:] B. Pietrzak, Z. Polański, B. Woźniak (red.), *System finansowy w Polsce*, Warszawa 2006, p. 87; A.M. Jurkowska, *Bank centralny a bezpieczeństwo i stabilność systemu finan-*

It is defined as "a condition in which the financial system performs its functions in a continuous and effective manner, even in the event of unexpected and unfavourable large-scale disturbances".[435] Moreover, the subject literature also indicates that we are dealing with a system characterized by stability, when the whole of the relations arising within it is distinguished by not being subject to significant fluctuations in prices.[436] Some percieve the analyzed basis of the financial system as the resilience of economic operators to economic shocks and financial inequalities,[437] or the state of undistorted financial flows.[438]

Taking into account the above argumentation, it seems most justified to define the generic object of protection of offences typified in Chapter XXXVII of the p.c. as the normative foundations of the money market, capital market (segments of the financial system) and economic and civil law turnover, which include stability, security and trust in trade, including in legal and factual activities with the use of money, monetary tokens, other legal tenders, securities, official valuable tokens, official marks, measuring or testing tools.

§ 2. The individual object protected by offences pursuant to Art. 310 § 1 of the p.c.

An important factor in deciding how to treat the money counterfeiting is to specify the goods this type is directed against. In connection with the above, the subject of analysis of this part of the work will be the individual object of protection, boiling down to the decoding of the legal good, attacked by the perpetrator of the type pursuant to Art. 310 § 1 of the p.c. The specific object of protection is characterized by a greater degree of concretization than the previously discussed generic approach.[439] In principle, it constitutes a certain fragment of the group object of protection.

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sowego, [in:] B. Polszakiewicz, J. Boehlke (red.), *Ład instytucjonalny w gospodarce*, Toruń 2005, p. 257; M. Kiedrowska, P. Marszałek, *Stabilność finansowa – pojęcie, cechy sposoby jej zapewnienia cz.1*, „BiK" 2002, z. 3, pp. 25–27.

[435] J. Osiński, P. Szpunar, D. Tymoczko (red.), *Przegląd stabilności systemu finansowego – październik 2008*, Warszawa 2008, p. 3; Z. Dobosiewicz, *Polskie instytucje finansowe w świetle nowego systemu prawa*, Warszawa 1998, p. 15.

[436] B. Wojno, [in:] L. Sobolewski, M. Wierzbowski, P. Wajda (red.), *Prawo…*, *op. cit.*, p. 1659.

[437] A. Stocka, J. Kołacz, *Zintegrowany nadzór nad rynkiem finansowym w Polsce*, Warszawa 2009, pp. 35–36.

[438] T. Nieborak, [in:] T. Sójka (red.), *Prawo rynku kapitałowego. Komentarz*, Warszawa 2005, pp. 1438–1439; idem, [in:] T. Nieborak, T. Sójka (red.), *Ustawa o nadzorze nad rynkiem kapitałowym. Komentarz*, Warszawa 2011, pp. 71–76.

[439] W. Cieślak, *Niektóre zagadnienia przedmiotu karnoprawnej ochrony*, „PiP" 1993, vol. 11–12, p. 64; A. Gubiński, *Zasady…*, *op. cit.*, p. 50; W. Świda, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 20; I. Andrejew, *Polskie…*, *op. cit.*, pp. 169–170; J. Waszczyński, *Prawo…*, *op. cit.*, p. 121.

The argument should start with a view, which currently does not constitute a representative voice in considerations of the criminal law science. We are talking about the assumption that the crime of counterfeiting money constitutes an attack on the state monopoly.[440] The second category includes the statement that the individual object of protection of this type is property.[441] A convergent argument can be found in the Germanic literature, where we find references to the protection of property.[442] Under the third approach, economic life in the state or the interest of the state is taken as an individual object of protection.[443] The fourth category is that of safeguarding the financial system or the monetary system or economic transactions.[444] According to the fifth proposal, the specific object of protection is the supra-individual interests of the society.[445] According to the sixth approach, the value that is individually protected is the stability of payment transactions with the use of money.[446] The seventh of the approaches is both the most complex in scope and the most widely represented among the representatives of the doctrine of law. It refers to the basis for trading in

[440] N. Tagancew, *Kodeks karny (22 marca 1903 r.), od Art. 1–197 tłumaczyli Adwokaci I. Dąbrowo i R. Lobman, od Art. 198–687 tłumaczył Sędzia L. Konic*, Warszawa 1923, p. 454; J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1938 (reprint Lublin 2012), p. 447.

[441] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1514.

[442] D. Kienapfel, [in:] E. Foregger, F. Nowakowski (Hrsg.), *Wiener…*, *op. cit.*, § 240 N 10.

[443] R. Góral, Kodeks karny. Komentarz, Warszawa 2005, p. 514; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, pp. 219–220; W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 416; M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski (red.), *Kodeks karny. Komentarz*, Warszawa 1971, p. 537; J. Śliwowski, *op. cit.*, p. 487; L. Peiper, *Komentarz do kodeksu karnego*, Kraków 1936, p. 374; *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom V. Zeszyt 4…*, *op. cit.*, p. 104; Judgment of the SC of 29 June 1972, ref. III KR 105/72, OSNKW 1972, vol. 12, item 194.

[444] M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, p. 1630; J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1598; idem, *Przestępstwa…*, *op. cit.*, p. 13; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1026; R. Góral, *Kodeks…*, *op. cit.*, p. 514; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, pp. 219–220; idem, *Prawo…*, *op. cit.*, p. 734; W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 416; I. Andrejew, *Kodeks karny. Krótki komentarz*, Warszawa 1981, p. 203; M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski (red.), *Kodeks karny. Komentarz*, Warszawa 1971, p. 537; J. Śliwowski, *op. cit.*, p. 71; judgment of the CA in Łódź of 2 March 2002, ref. II AKa 19/02, LEX No. 104434; decision of the CA in Warsaw of 13 December 2012, ref. II AKz 715/12, LEX nr 1246951; cf. A. Krukowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (red.), *System…*, *op. cit.*, p. 517.

[445] W. Makowski, *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austrjackiego, niemieckiego i rosyjskiego, obowiązującego w Polsce*, Warszawa 1924, p. 224; S. Glaser, *Polskie…*, *op. cit.*, p. 368.

[446] N. Tagancew, *op. cit.*, p. 445; *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom II…*, *op. cit.*, p. 336.

money, other legal tenders or securities.[447] The subsequent three approaches to the individual object of protection of Art. 310 § 1 of the p.c. will relate to specific values that should characterize trading on the basis of Chapter XXXII of the p.c. Their discussion is supported by the fact that not in every case the representatives of the doctrine classify them as the basis for trading money and securities. When the eighth approach is considered, it is the trust in the (authenticity) of money, other legal tenders and securities that is the directly protected good. The above approach is willingly shared by representatives of the doctrine of criminal law.[448] The ninth approach boils down to the authenticity and reliability of money, other legal tenders, or securities as a value directly affected by the incriminated conduct.[449] Some authors, apart from the reliability of money functioning in circulation, also emphasize its authenticity as a protected value. Such an approach is characteristic, among others, for Kazimierz Buchała[450] and Jerzy Skorupka.[451] According to the last concept, the individual object

[447] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 1; J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit*., p. 1820; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit*., p. 787; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1602; idem, *Przestępstwa…*, *op. cit*., p. 14; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1024; J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 2; Z. Siwik, [in:] M. Filar (red.), *Kodeks karny. Komentarz*, Warszawa 2016, p. 1647; R. Góral, *Kodeks…*, *op. cit*., p. 514; O. Górniok, *Przestępstwa…*, *op. cit*., p. 120; W. Wolter, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit*., p. 816; J. Śliwowski, *op. cit*., p. 72; N. Tagancew, *op. cit*., p. 444; Resolution of the SC of 19 June 1982, ref. III KR 105/72, OSNKW 1972, vol. 12, item 194; decision of the CA in Katowice of 3 February 2008, ref. II AKp 24/08, Prok. i Pr.-wkł., 2008, vol. 7–8, item 44.

[448] Synthesis found in: M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1029; J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 2; J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit*., p. 786; Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit*., p. 1647; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 219.

[449] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 1; M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit*., p. 1630; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1029; J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit*., p. 787; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1602; idem, *Przestępstwa…*, *op. cit*., p. 14; J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 2; A. Marek, *Kodeks…*, *op. cit*., p. 571; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 219; A. Krukowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (red.), *System…*, *op. cit*., pp. 517–520; W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit*., p. 416; W. Świda, *Prawo…*, *op. cit*., p. 618; idem, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit*., pp. 723–724.

[450] K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 219.

[451] J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1602; idem, *Przestępstwa…*, *op. cit*., p. 14; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1029; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 219.

of protection under Art. 310 § 1 of the p.c. is the value defined as "the ability to remain in circulation".[452]

Reviewing the positions of the representatives of the doctrine opens the way for expressing our own views. Taking into account the fact that the direct object of protection is only a fragment of a generic approach, it is necessary to specify and further detail the previously presented definition. The assessment of the views expressed allows to formulate the thesis that on the basis of Art. 310 § 1 of the p.c., the normative bases of the money, capital, economic and civil law market are protected, which include:

1) security, by creating a proper legal and institutional framework for the correct functioning of money, capital, economic and civil law transactions, guaranteeing the possibility of eliminating the revealed threats, expressing themselves in the protection of access to financial market activities, the need to comply with procedures related to legal issuance of money, putting and withdrawing it from circulation,

2) stability is expressed in the protection of the credibility of money or monetary tokens that are issued and functioning in trading by protecting their authenticity, fitness for functioning in trading and trust in them as important and performing the functions provided for by the system,

3) trust in the most important segments of the financial market, resulting from the fact that the money functioning within them constitutes an immanent part of the national economy and undermining their role could generate a risk to the interests of the Republic of Poland and other countries participating in international trade.

The comments made lead to further reflection. It is difficult not to get the impression that the protection of the normative foundations of money, capital, economic and civil law trade in the form of security, stability and trust is the main, but not the sole, object of criminal protection of the type. On the basis of the Austrian legal order, the perspective on the protection of the security of payment transactions is questioned. It is accused of having too extensive a range of subject-matter values that are objects of direct protection. Instead, it opts only for the so-called "institutional protection" of certain financial market participants.[453] In Switzerland, on the other hand, the security of payment transactions is relatively uniformly accepted as an individual object of protection.[454] At times, however, attempts are made to characterise the valued legal good more broadly, by assuming that general confidence in the security of monetary transactions or a monetary interest in obtaining authentic legal tender are protected.[455]

[452] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1024.

[453] D. Kienapfel, [in:] E. Foregger, F. Nowakowski (Hrsg.), *op. cit.*, § 232 N 5.

[454] C.L. Meili, S. Keller, *op. cit.* p. 1721; S.B. Kim, *op. cit.*, pp. 33–35; M.A. Niggli, *op. cit.*, Art. 240 N 60–65; S. Trechsel et al., *op. cit.*, Art. 240 N 1; M.A. Niggli, G. Fiolka, *op. cit.*, p. 272; G. Stratenwerth, W. Wohlers, *Schweizerisches…*, *op. cit.*, p. 477; E. Hafter, *op. cit.*, p. 572.

[455] M.A. Niggli, *op. cit.*, Art. 240 N 65.

The considerations of German dogmatists are dominated by an approach indicating the need to protect the security of payment transactions, as a value towards which the criminal activity of the counterfeiter is directed.[456] It is understood as a legal interest independent of the state.[457] Moreover, it is in the interest of the general public, i.e. entities using money, other legal tenders or securities, even though only the competent authorities of the State are entitled to emit, issue or produce them.[458] Sometimes the security element is complemented by cumulative protection of the functionalities of the traded transactions.[459] Against this background, the need to protect the property interests of entities involved/participating in transactions using imitation money is excluded.[460] The above approach makes it possible to consider as a special (secondary) object of protection the act typified in Art. 310 § 1 of the p.c., the normative grounds of the money, capital, economic and civil law markets in terms of their security, stability and confidence in money-based payment transactions.

The current considerations lead to the conclusion that it is possible to interpret the criminal law norm of counterfeiting money or its surrogate in such a way that, on the basis of a specific object of protection, it reflects not only the general good but also the individual values of entities participating in the system. A situation is conceivable when, assessed on the basis of Art. 310 § 1 of the p.c., a conduct poses a threat to the non-pecuniary or property interests of a participant of the financial system. A different view expressed in judicial case law refers to the dubious view that binds the offences grouped in Chapter XXXVII of the p.c. exclusively to the protection of goods of a general nature.[461] Moreover, it is a manifestation of the devaluation of risk for individual values, which may be created by the implementation of ele-

[456] W. Ruß, *op. cit.*, p. 8; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 3; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 1–4f; T. Fischer, *op. cit.*, p. 1059; W. Stree [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1180; K. Kühl, *op. cit.*, p. 653; R. Maurach, F-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 17; D. Zielinski, *op. cit.*, p. 193; BGH 46, 146, 151.

[457] R. Maurach, F.-Ch. Schroeder, M. Maiwald, *op. cit.*, § 67 N 17.

[458] I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 42–45; D. Zieliński, *op. cit.*, p. 193.

[459] W. Ruß, *op. cit.*, p. 8; T. Fischer, *op. cit.*, p. 1059; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 1 et seq.; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 3.

[460] U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 2.

[461] Comments similar in scope to those made above can be found on the basis of the considerations on the type under Art. 270 § 1 of the p.c., see M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *op. cit.*, p. 1474; T. Razowski, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1191; W. Wróbel, T. Sroka, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna, t. II, cz. II. Komentarz do art. 212-277d*, Warszawa 2017, pp. 691–692; J. Błachut, *op. cit.*, p. 91 et seq.; Sz. Tarapata, *Dobro…*, *op. cit.*, p. 565 et seq.

ments of type under Art. 310 § 1 of the p.c. It is worth recalling that the protection of the normative foundations of the financial system has the deepest justification only when it serves to protect individual goods. The conducted analysis allows us to formulate the conclusion that the property or non-property interests and rights of participants in the financial system may be protected under Art. 310 § 1 of the p.c. This means that in cases concerning the analyzed type of counterfeiting, there are no obstacles to granting a given person the status of a victim, if all the conditions provided for in Art. 49 § 1 of the Polish Code of Criminal Procedure[462] are present. The decisive argument aimed at negating the above finding is not the general nature of the direct object of protection of money counterfeiting. The analysis emphasized that the act under Art. 310 § 1 of the p.c., in addition to the supra-individual good, may also protect values of an individual nature. This leads us to the conclusion that in the realities of a specific case it is impossible to exclude the granting of the status of aggrieved party to an entity that, as a result of counterfeiting under Art. 310 § 1 of the p.c., will suffer a direct violation or threat of an individual interest having a material or non-pecuniary overtones.

3. Objective side

§ 1. Introductory remarks

In accordance with Art. 310 § 1 of the p.c., a person who counterfeits or converts Polish or foreign money, Polish or foreign monetary token, which has been established as a legal tender, but has not yet been put into circulation, other legal tenders or a document entitling to receive a sum of money or containing the obligation to pay capital, interest, share in profits or a statement of participation in a company or removes the sign of redemption from money, other legal tenders or such a document, is liable to prosecution. From the point of view of the subject scope of the work and further analyses, the research perspective should be narrowed down. It should be indicated that the issue of causative action and the legally relevant effect will be fully discussed within the type of the subjective side. The object of executive action will be characterized only partially. In the course of the considerations, the issue of a wide range of documents (securities) and other legal tenders that are subject to criminal law protection pursuant to Art. 310 § 1 of the p.c. has been omitted. This is due to the fact that the indicated elements are not money under Polish law. The above remark also applies to non-cash money in both its basic forms. In the light of

[462] The Act of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 98, item 555, as amended).

the amended content of Art. 115 § 9 of the p.c. an interpretation that would allow on the basis of Art. 310 § 1 of the p.c., to include so-called bank money or electronic money in the category of money, became untenable. The rationale for this position will be presented at further stages of consideration.

Clearing the foreground of further analyses, it is worth mentioning the relatively complex structure of the regulation typifying money counterfeiting. The criminalised criminal behaviour was characterized by the use of casuistic dispositions and descriptive elements. On the basis of the discussed type, the legislator uses both an exclusive disjunction and an ordinary alternative. It does so within the framework of the comprehensive characteristics of the objects of the enforcement action and to show the distinction between criminal varieties of prohibited conduct. Moreover, it is worth noting that the disposition formula used by the legislator is partly blank.[463] In order to decode the criminal law norm, the interpreter should refer to the statutory and subordinate provisions of various fields of law. In particular, the characteristics of the objects of the enforcement action require the use of normative acts other than the Penal Code. In the first place, we will analyze the issue of prohibited behaviour of the perpetrator. In addition, the issue of the quality/level of the created imitation will be considered and the issue will be transferred to bringing the perpetrator to criminal liability for the title offense. Subsequently, we will direct our attention to characterization of the carriers of legal goods on which the attempt of the perpetrator is directed, i.e. money and a monetary token. The argument will close with comments on the issue of consequence.

§ 2. Definition of the executive action

1. Introductory remarks

Behaviour of the perpetrator of the offence under Art. 310 § 1 of the p.c. may consist in counterfeiting Polish or foreign money or a monetary token, their altering or removing the sign of redemption from them. It is agreed that we are dealing here with the so-called multivariate crime.[464] For the sake of clarity, it should be indicated that the concept of varieties of the prohibited act is not uniformly interpreted in the subject literature. For example, Tadeusz Bojarski recognizes modified types (aggravated and mitigated)[465] as a variant of the prohibited act. On the basis of this

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[463] J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 762.

[464] Decision of the SC of 17 April 2007, ref. V KK 90/07, OSNwSK 2007, z. 1, item 822; J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 764.

[465] T. Bojarski, *Odmiany podstawowych typów przestępstw w polskim prawie karnym*, Warszawa 1972.

work, the concept of varieties of the prohibited act is interpreted in the traditional sense. This leads to the conclusion that the type of act prohibited under Art. 310 § 1 of the p.c., may be perpetrated in three variations, determined by the structure of the causative action.[466] In all variations of forbidden behaviour, the act can be performed by an act. It is also possible to imagine the realization of verb elements by omission. Although this issue will be a separate topic of analysis, in this case the type constitutes *delicta per omissionem commissa*.[467]

2. Counterfeiting

The term "counterfeits" as a designator of the criminal conduct of perpetrator under Art. 310 § 1 of the p.c. has a rather long tradition in the Polish criminal codification. It would seem that this will lead to a clarification in doctrinal considerations and judicial jurisprudence of a consistent interpretation of the essential elements of the causative action of money counterfeiting. Without anticipating further arguments, however, it is agreed that the analysis highlighted the still prevailing discrepancies. In decoding the constituent element of the causative action, it is appropriate to refer to the meaning rules of the national language. From the point of view of the Polish language, "counterfeiting" means making an imitation of some thing that is to be considered an original, falsifying something, making a second copy of an object in order to illegally use it.[468] In turn, "falsification" means, among other things, the representation of something false, distortion.[469]

A synthetic approach to prohibited behaviour on the basis of Art. 310 § 1 of the p.c. was proposed by Stefan Glaser. In his opinion, counterfeiting should be understood as the production of tokens that imitate real money.[470] In a similar way, a variation of the causative action is taught by Andrzej Marek, indicating that "counterfeiting means the production of an object which imitates money (a banknote or a coin), other legal tenders or a document as defined in that provision".[471] In this context, it is worth noting the opinions of Joanna Piórkowska-Flieger and Tomasz Oczkowski. The first of the aforementioned is of the opinion that the implementation of a causative act in the field of counterfeiting boils down to giving some object

466 M. Rodzynkiewicz, *Modelowanie pojęć w prawie karnym*, Kraków 1998, p. 42 et seq.

467 P. Konieczniak, *op. cit.*, p. 290 et seq.; A. Wąsek, [in:] O. Górniok et al., *Komentarz…*, *op. cit.*, pp. 40–42; Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 835; M. Cieślak, *Polskie…*, *op. cit.*, p. 145; W. Wolter, *Nauka…*, *op. cit.*, p. 55; cf. L. Kubicki, *Przestępstwo popełnione przez zaniechanie*, Warszawa 1975, p. 81.

468 M. Szymczak (red.), *Słownik języka polskiego, t. II*, Warszawa 1979, p. 745.

469 M. Szymczak (red.), *Słownik języka polskiego, t. I*, Warszawa 1979, p. 570.

470 S. Glaser, *Polskie…*, *op. cit.*, p. 369.

471 A. Marek, *Kodeks…*, *op. cit.*, p. 573.

the appearance of money, other legal tenders or a document referred to in Art. 310 § 1 of the p.c.[472] In Oczkowski's opinion, counterfeiting means creating an imitation of money. Thus, the author reduces the analyzed variant of forbidden behaviour to imitation of money or legal tender.[473] Similar voices can be found in German-language literature. For example, Christiane Lentjes Meili and Stefan Keller point out that counterfeiting should be understood as the production of objects that give the impression of something other than what they really are.[474] Marcel Alexander Niggli expressed a similar position. It is worth noting that the indicated author, when addressing the issue of executive action, pointed out that the act includes all actions that lead to the creation of an imitation of money issued by a state or a state authorized body.[475] Next, it is worth noting the view of Witold Świda, who consistently maintained that counterfeiting should be understood as the production of a new object having the appearance of authentic money or other legal tenders.[476] The above approach is shared in its entirety by Zygfryd Siwik[477] and Janusz Wojciechowski. However, it is worth clarifying that the last of the above mentioned assumed that counterfeiting "means the execution of an imitation of an object which is to be regarded as the original".[478] Włodzimierz Gutekunst assumes, in a similar tone, that we are dealing with a counterfeit when the perpetrator creates a new false object with such characteristics that it can be deemed to be authentic.[479] Such a determination of the analyzed variant of the causative action is characteristic in the argumentation presented also by Adam Krukowski,[480] Jerzy Skorupka,[481] Grzegorz Łabuda,[482] Zbigniew Ćwiąkalski,[483] Włodzimierz Wróbel and Tomasz Sroka[484] or

[472] J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[473] T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks…*, *op. cit.*, p. 1423.

[474] C.L. Meili, S. Keller, *op. cit.* p. 1725.

[475] M.A. Niggli, *op. cit.*, Art. 240 N 14.

[476] W. Świda, *Prawo…*, *op. cit.*, p. 619; idem, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit.*, p. 724.

[477] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1648.

[478] J. Wojciechowski, *Ustawa o ochronie obrotu gospodarczego z komentarzem*, Toruń 1994, p. 66; idem, *Kodeks karny. Komentarz. Orzecznictwo*, Toruń 2002, p. 547.

[479] W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 417.

[480] A. Krukowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (red.), *System…*, *op. cit.*, p. 520.

[481] J. Skorupka, *Przestępstwa fałszowania papierów wartościowych w nowym kodeksie karnym*, „Prok. i Pr". 1998, z. 10, p. 73; idem, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1820; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, p. 810; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1603; idem, *Przestępstwa…*, *op. cit.*, pp. 75–76; cf. M. Jachimowicz, *op. cit.*, pp. 99–100.

[482] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, pp. 1514–1515.

[483] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 932.

[484] W. Wróbel, T. Sroka, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna. Tom II. Część II*, *op. cit.*, p. 701.

Małgorzata Gałązka.[485] The view of Igor Andrejew on the characteristics of prohibited conduct treated as a forgery also needs to be noted. This is justified by the fact that he was the first to translate the requirement of a certain quality of the created imitation into the issue of a model participant in money, capital, economic or civil law transactions, who is the recipient of the counterfeit. The said author considered that the content of the counterfeiting operation boils down to the production of objects so similar to money that an averagely experienced person, accepting such an object in normal circumstances, could not immediately become aware of its inauthenticity.[486] As can be seen, in the light of the views of Andrejew, the reference point for recognizing the implementation of prohibited conduct by the perpetrator is to obtain a level of imitation that is capable to mislead the average trading participant. In addition to the above, Roman Góral's statement indicates that the fulfillment of the objective side element in the form of counterfeit can be referred to when the perpetrator "produces an object (banknote or coin) with such a resemblance to money that an averagely experienced person, accepting it in normal circumstances, could not immediately realize that it is false".[487] Signaling only the essence of the views of Andrejew and Góral, it is worth noting that a similar approach to the subject can be observed on the basis of legal comparative analyses. For example, Walter Stree considered that the act of counterfeiting constitutes physical processing of a thing in such a way that it may be confused with another, which it is not. Such an assumption led the author to the conclusion that we are dealing with counterfeit money if the imitation gives the impression of being valid and is able to mislead unsuspecting persons, as part of small monetary transactions of everyday life.[488] Similarly, Thomas Fischer assumed that the counterfeit represented a reflection so closely resembling the original that it could be confused therewith.[489] In response to the above issue, on the basis of Art. 310 § 1 of the p.c., counterfeiting should be understood as the creation of an object resembling money or a monetary token so closely that it may be considered an original.

Next, it is necessary to signal the issue that was the object of reflection among the representatives of the Germanic-language doctrine of criminal law. In the course of penal law theory considerations, they sought the answer to the question whether multiple changes to the data encoded on the magnetic strip of a payment card constitute the implementation of elements of the type of money counterfeiting. From the point of view of the dogma of criminal law, this issue logically relates to the

[485] M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit*., p. 1477.

[486] I. Andrejew, *Kodeks…*, *op. cit*., p. 203.

[487] R. Góral, *Kodeks…*, *op. cit*., p. 517; cf. Z. Kukuła, *Glosa do wyroku SA w Rzeszowie z 22.1.2015 r., II AKa 116/14*, „KSSiP" 2016, vol. 2, pp. 98–99.

[488] W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit*., p. 1181.

[489] T. Fischer, *op. cit*., p. 1061.

issue of assessing the admissibility of the implementation of the functional element in question in relation to the carrier of the legal good, which was previously counterfeited. Verifying doubts arising in such a specific field of research is of significant practical and theoretical importance. It is worth stating at this point that the meaning range of the element of the causative activity on the basis of Art. 310 § 1 of the p.c. includes the criminalisation of any manipulation of a counterfeit. This means that the perpetrator will commit counterfeiting of a payment instrument if, without being entitled to do so, they will modify the data encoded in the magnetic bar of the counterfeit payment card.[490] The act of counterfeiting money also means further manipulation of previously counterfeited values. Therefore, there are no obstacles to criminal liability for the counterfeiting of a monetary token when the perpetrator, by interfering with its content, repeatedly changes the designation of the nominal value.[491] However, it is worth noting here that the multiplicity of the perpetrator's conduct in relation to the same carrier of the legal good does not necessarily mean the multiplication of crimes. In many cases it will be the same act constituting a single crime, but *in concreto* it is not possible to fully exclude the multiplicity of crimes or co-punishment.

Summing up the most important threads of the analyses so far, it should be pointed out that counterfeiting is the creation of an object resembling money, a monetary token in such a way that it can be deemed to be an original. In this way, the perpetrator gives a certain object a seemingly authentic value. Moreover, the act of counterfeiting includes any further manipulation of the resulting counterfeit. Devoid of meaning on the basis of type, are the techniques, methods and means used by the perpetrator for counterfeiting of money.

3. Altering

The term "alters" as a feature of the perpetrator's criminal conduct under Art. 310 § 1 of the p.c. also has a long legislative tradition in the Polish criminal codification. This could mean agreeing positions on the interpretation of the essential elements of the causative act of counterfeiting money. Without anticipating further arguments, the analysis highlighted the remaining discrepancies, in particular in the positions of the representatives of the doctrine. In initiating the discussion regarding the constituent element of this action, it is appropriate to refer to the meaning rules of our national language. From the point of view of the Polish language, the term "to alter" means "to change the shape, form of something, develop something again,

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490 I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 7–14; W. Ruß, *op. cit.*, p. 57; T. Fischer, *op. cit.*, p. 1078.

491 T. Fischer, *op. cit.*, p. 1078.

rework something, make something out of something else".[492] Taking into account the ambiguities occurring on the basis of semantics, it is necessary to analyze the efforts made to clarify the second variant of the functional element. On the basis of Art. 310 § 1 of the p.c., the altering of money, a monetary token, other legal tenders or a security constitutes a separate causative act subject to sanction. In order to decode the meaning of this term, it should first be noted that alternative concepts compete on the basis of criminal law protection of money. According to the first of the views, we are dealing with altering when the perpetrator induces such a change in the content of the medium of the legal good, which gives it the appearance of a higher value. On the basis of alternative views, the counterfeiting in the analyzed variant occurs in every case of interference with the content of authentic money. The decision as to which of the competing approaches should be considered correct requires a prior review of the positions expressed in the literature.

The most synthetic approach within the first category was presented by Glaser, who admitted that the implementation of the causative action of this type means "giving money the appearance of a higher value".[493] The thesis formulated by Świda is even more decisive, and this author considered it to be a transformation, such a change in the authentic content of a carrier of legal goods, which could give it the appearance of a higher value.[494] It is worth noting that the assumptions of the first concept are noticeable in a comparative legal perspective, on the basis of the system of German-speaking states. In Switzerland, the causative act of counterfeiting can only concern a situation where the subject of the offence uses authentic money. This means that it does not constitute an implementation of elements of the type of alteration of a counterfeit subject of the executive activity.[495] It is, therefore, about any change in a valid currency that gives it the appearance of a higher nominal value. In this context the way the perpetrator achieves the intended effect is insignificant.[496] Interestingly, one does not fall under the scope of application of the Swiss type of altering, when the perpetrator – without modifying the nominal value – changes the shape of the money in order to use it to play slot machines.[497]

[492] E. Sobol (red.), *Nowy słownik języka polskiego*, Warszawa 2003, p. 784.

[493] S. Glaser, *Polskie…*, *op. cit*., p. 369.

[494] W. Świda, *Prawo…*, *op. cit*., p. 619; idem, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Prawo…*, *op. cit*., p. 724; cf. the judgment of the SC of 4 August 1977, ref. V KR 86/77, OSNPG 1977, vol. 11, item 109.

[495] E. Hafter, *op. cit*., p. 577; M.A. Niggli, *op. cit*., Art. 241 N 13; S.B. Kim, *op. cit*., p. 79.

[496] C.L. Meili, S. Keller, *op. cit*. p. 1732; S.B. Kim, *op. cit*., pp. 78–79; M.A. Niggli, *op. cit*., Art. 241 N 14; G. Stratenwerth, F. Bommer, *op. cit*., § 33 N 13; G. Stratenwerth, W. Wohlers, *op. cit*., p. 478; B. Neidhart, *op. cit*., p. 201.

[497] C.L. Meili, S. Keller, *op. cit*. p. 1733; M.A. Niggli, *op. cit*., Art. 241 N 15; G. Stratenwerth, F. Bommer, *op. cit*., § 33 N 13; S.B. Kim, *op. cit*., p. 79.

Under the German Penal Code, money is altered when the modification gives it the appearance of a higher value. In this content it is of no significance, how the perpetrator achieves the intended effect. Subject literature indicates that a higher value should be understood as the nominal value that money has as a legal tender. This leads to the conclusion that there are no elements of the type when the altering concerned elements of the public guarantee of the state declared in money, which are important for the collector's value. In turn, when the perpetrator fails to create the appearance of a higher value of money, we are dealing with an attempt.[498] In Germany, on the other hand, it is rightly assumed that the alteration of the carrier of the legal good implies a change in authentic money in such a way as to create the appearance of its higher value.[499]

Initiating a thread referring to the second of the distinguished categories, on the basis of alteration, Buchała emphasized the need for the perpetrator to introduce such modifications to the authentic carrier (money, other legal tenders), the object of which did not have before altering, and which may create the impression that it is an original.[500] The thread of changing the original carrier is accompanied by the argument of Wojciechowski, who indicated that altering is a reworking of something, a change in shape and form.[501] Skorupka draws attention to the general-abstract nature of the verb element, which does not narrow the exponential result of forbidden behaviour. Under altering, this author understands any change in the appearance of the carrier of the legal good that could give it a different – both higher and lower – value.[502] Robert Zawłocki had a similar view on this issue.[503] A similar position was expressed by Piórkowska-Flieger,[504] Magdalena Błaszczyk,[505] Emil Pływaczewski[506] and Stanisław Łagodziński.[507] We find a slightly different definition of altering in Góral who, referring to the description of the functional element, pointed out that the variant of the causative action should be understood as "inducing a change in the appearance of authentic money in a way that may give it

[498] See I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 9; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 7; W. Ruß, *op. cit.*, p. 15.

[499] I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 9; W. Ruß, *op. cit.*, p. 11.

[500] K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 222.

[501] J. Wojciechowski, *Ustawa…*, *op. cit.*, p. 66.

[502] J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1604; idem, *Przestępstwa…*, *op. cit.*, p. 77.

[503] R. Zawłocki, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 770.

[504] J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[505] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1031.

[506] E. Pływaczewski, [in:] A. Marek (red.), *Prawo karne. Zagadnienia teorii i praktyki*, Warszawa 1986, p. 419.

[507] S. Łagodziński, *Glosa…*, *op. cit.*, p. 99.

the appearance of money of a higher denomination".[508] The above view seems to be shared by Marek[509] and Siwik.[510]

Taking the analysis conducted so far from the point of view of altering as an alternative variant of the conduct of the perpetrator of the offense under Art. 310 § 1 of the p.c. into account, it is necessary to summarize the most important aspects of it. As part of this work, the second of the distinguished groups of positions characterizing the causative action should be advocated. On the basis of this type of counterfeiting, altering means introducing a change in the original money, which creates the appearance of its authenticity. Such a definition allows for the proper qualification of the perpetrator's behaviour, in isolation from the type of modification made by them. In particular we will omit the alterations which imply the creation of the appearance of a higher nominal value, which are overemphasized in the subject literature. However, this does not mean depreciating the fact that *in concreto* most alterations adopt this type of form. Moreover, it should be emphasized that *in abstracto* both varieties of causative behaviour are characterized by an identical degree of reprehensibility. Consequently, the same limits of criminal sanctions in the case of their implementation are accurately determined. It should be noted that from the point of view of the admissibility of criminal liability for money altering, it does not introduce variables of both the type of means used and the chosen method of action. In order to assign the verbal element, the introduced alteration does not have to demonstrate durability or irreversibility.

4. Removing the sign of redemption

The last variation of the causative action type under Art. 310 § 1 of the p.c. is the removal of the sign of redemption from money. When interpreting the meaning of the verbal element, it is worth paying attention to the rules set on the basis of common language. Having regard to the above, it should be stated that "remove" means "to take something from somewhere, to remove someone from somewhere, to deprive someone of a position or office, to make something cease to exist, to pull or drag something out of a living organism".[511] On the other hand, the following words are considered to be close: "move", "move away", "displace", "translate", "take out", "take away".[512]

In the context of defining a verbal element, first of all, the approach presented by Świda should be indicated. In his opinion, the removal of the sign of redemp-

[508] R. Góral, *Kodeks…*, *op. cit.*, p. 517.

[509] A. Marek, *Kodeks…*, *op. cit.*, p. 573.

[510] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1649.

[511] S. Linde (red.), *Słownik języka polskiego. Tom 6*, Lwów 1860, p. 184.

[512] A. Latusek (red.), *Praktyczny słownik wyrazów i zwrotów bliskoznacznych*, Kraków 2001, pp. 256–261.

tion consists in "rendering that sign invisible on an authentic copy of money or a security".[513] The above view is dominant in doctrinal considerations and was unreservedly shared by Gutekunst,[514] Andrejew,[515] Góral,[516] Marek,[517] Pływaczewski,[518] Piórkowska Flieger,[519] Siwik,[520] Bartłomiej Gadecki,[521] Małgorzata Gałązka,[522] Ćwiąkalski[523] and Buchała.[524] It is worth noting, however, that the latter detailed the problem, assuming that the removal of the sign of redemption is also to cause that money acquires its original appearance, in isolation from the shape, durability or recognizability of the stamp.[525] In a similar way, the issue was described by Grzegorz Łabuda and Marek Kulik. The first of the authors indicates that the removal manifests itself in "getting rid of such a sign (…) or making it invisible".[526] In turn, Kulik recognizes that the implementation of the causative action in this variation of prohibited behaviour consists in "making it [sign – M.B.] in any way invisible or getting rid of it".[527] Oczkowski and Błaszczyk draw attention to a different aspect of understanding the element of the objective side in question. They stress that the removal of the sign of redemption amounts to restoring to the money, other legal tenders or documents the right to participate in trade as authentic.[528] The optics of Błaszczyk and Oczkowski on the characteristics of this variation of the causative action appears to be the most interesting. This is due to the fact that their concept breaks away from the external form of the carrier of the legal good, on which the sign of redemption is placed. Moreover, it puts in the foreground the legal consequences that are associated with the application of such a designation to the object of the executive action and its removal.

513 W. Świda, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit.*, pp. 724–725; idem, *Prawo…*, *op. cit.*, p. 619.

514 W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 419.

515 I. Andrejew, *Kodeks…*, *op. cit.*, p. 203.

516 R. Góral, *Kodeks…*, *op. cit.*, p. 517.

517 A. Marek, *Kodeks…*, *op. cit.*, p. 537.

518 E. Pływaczewski, [in:] A. Marek (red.), *Prawo…*, *op. cit.*, p. 419.

519 J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

520 Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1649.

521 B. Gadecki, *Kodeks…*, *op. cit.*, Legalis art. 310 nb 4.

522 M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, p. 1634.

523 Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 936.

524 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, pp. 222–223.

525 *Ibidem*, p. 225.

526 G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1515.

527 M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 15.

528 T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks…*, *op. cit.*, p. 1424; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1033.

It should be noted that the implementation of the causative action is to affect a certain object. Moreover, it is to lead to specific consequences for the legal good in the form of normative foundations of the financial system. The subject literature clearly indicated that a sign of redemption should be understood as a sign indicating the cancellation of money and its exclusion from trading,[529] usually in the form of a special stamp or seal.[530] It is worth noting that a court decision or a decision of a competent authority may also constitute a sign of redemption within the meaning of Art. 310 § 1 of the p.c.[531] This type of situation will, however, mostly concern the documents indicated *in fine* in the content of this provision. The redemption indicated by the sign placed on the money communicates the discontinuation of property law and the guarantee of the state manifested in ensuring its universal and unlimited obligation to accept, from the material carrier, i.e. the monetary token.[532] The realization of a verbal element, thus, leads to a specific "restoration of the previous condition" before the redeeming of money and, consequently, the creation of the appearance that imitation is a value still functioning in circulation.[533]

Next, the topic of treating the removal of the sign of redemption as a special form of money altering should be addressed. In this context, two voices can be noticed among the representatives of doctrine, presenting divergent views. The first indicating the possibility of such a broad interpretation of money altering can be found as part of the work of the Codification Commission of the Republic of Poland. It presented the following statement: "In addition, a specific form of counterfeiting of money and securities is the removal of signs of its withdrawal from circulation, and thus deprivation of value. (…) Apart from certain interpretative doubts, it must seem advisable to classify this type of activity as a money-altering offence".[534] It seems that Juliusz Makarewicz also belonged to the supporters of the above view.[535] In the light of the above, it was considerations of a legislative rather than substantive nature

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[529] A. Nowak, [in:] A. Nowak, T. Malczyk, R. Nesterowicz (red.), *Zwalczanie fałszerstw pieniędzy*, Szczytno 2010, p. 17; Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit*., p. 936.

[530] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit*., p. 1649; M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski (red.), *Kodeks…*, *op. cit*., p. 536.

[531] J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit*., p. 815; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1615; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1033.

[532] J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit*., p. 1823; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit*., p. 815; E. Pływaczewski, *op. cit*, p. 419.

[533] Synthesis found in: M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 1033; E. Pływaczewski, *op. cit*, p. 419; J. Śliwowski, *op. cit*., p. 487; L. Peiper, *Komentarz…*, *op. cit*., p. 376.

[534] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom II*, *op. cit*., p. 342.

[535] J. Makarewicz, *Kodeks…*, *op. cit*., p. 447.

that had a decisive impact on such recognition of the essence of causative actions. The alternative approach, indicating the distinctiveness of each of the varieties of prohibited behaviour, is advocated by Gutekunst[536] and Buchała.[537]

Commenting on the outlined issue, it should be noted that special considerations related to the proper protection of the foundations of the financial system were in favour of distinguishing the removal of the sign of redemption as a separate category of causative behaviour. It is impossible to ignore such an important argument. In addition, it should be noted that each of the causative actions covered by the content of Art. 310 § 1 of the p.c. is of a disjoint nature in relation to each other. Although the *prima facie* interpretative frames of the functional features of the alteration and removal of the signs of redemption remain in the crossing relationship, such a conclusion would be fraught with the risk of error. It should be emphasized that removing the sign of redemption does not constitute a variant of money altering, but a separate variation of prohibited behaviour. Therefore, it seems correct to conclude that causative actions remain in the exclusion relationship.

In conclusion, it is worth pointing out that removing the sign of redemption should be understood as any factual or legal act that leads to the restoration of the economic significance of money it had before its cancellation. Moreover, the modification of money should take place in such a way that the counterfeit creates the appearance of authenticity. The above approach allows to take into account the previous conclusions of the representatives of the doctrine, synthesize them and present them in a slightly different light. The modification of the current view is limited to broadening the perspective and taking into account the specificity of the particular way of excluding money from trading, which is relevant for the type under Art. 310 § 1 of the p.c.

5. Similarity of the counterfeit to the original money or monetary token

At the previous stages of the analysis, it was pointed out that counterfeiting money can be reduced to its creation in such a way that it can be considered an original. The behaviour consisting in making modifications in money in such a way as to create the appearance of authenticity was recognized as altering the carrier of the legal good. In turn, when removing the sign of redemption is considered, it was assumed that the implementation of the causative action is any behaviour that, while maintaining the appearance of authenticity, restores the economic functions of money to the carrier of the legal good. Such a definition, at least in the semantic layer, seems to

[536] W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit*., p. 419.

[537] K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., pp. 222–223.

assume the existence of a certain threshold of compliance of the counterfeit with the original money. The question arises whether and, if so, with what criteria a binding assessment of the similarity of imitation on the basis of the type of prohibited act in question should be made. The issue of bringing to criminal responsibility for the creation of imitation, which masterfully reflects the features of the original money seems to be out of debate. Difficulties in evaluating the act of the perpetrator arise when the imitation deviates in its similarity from the original – often even significantly. In connection with the above, in the further part of the work we will present and analyse the models developed in the doctrine of criminal law and judicial jurisprudence to eliminate and verify whether we are dealing with counterfeit money.

The resemblance of counterfeit to the original does not constitute a strictly language science question. The issue of assessing whether the perpetrator (effectively) counterfeited, altered or removed the sign of redemption from the legal good carrier has legal implications. It is worth noting here that making arrangements regarding the achievement of a certain subminimum threshold of convergence with the original by imitation is important from the point of view of recognizing a given behaviour as the subject of criminal law valuation from the point of view of the disposition of Art. 310 § 1 of the p.c., issues of attempted forms of the prohibited act, in particular the responsibility for making or assigning criminal responsibility for an unsuccessful attempt. Moreover, it can generate issues from the point of view of excluding the perpetrator's liability due to the lack of a component of guilt, excluded by an error as to the constituent elements.

The starting point for further analysis should be to determine whether there is a minimum range of elements of the monetary token, the inclusion of which in the counterfeit determines the criminal liability of the offender. Accordingly, the omission of these components would exclude the implementation of elements of the type under Art. 310 § 1 of the p.c., due to the lack of convergence with the original. Such an approach would constitute a preliminary reduction mechanism, eliminating behaviours that inherently do not pose a threat to the legal good from the scope of criminal law valuation. In this context, attention should be paid to the following perspective.

First of all, the similarity of imitation can be assessed taking into account similar external features that affect the possibility of confusing the imitation with authentic money (e.g. format, colour, shape, denomination). Secondly, the structural features of a coin or banknote (metal or paper used by the perpetrator) can be used to determine the degree of matching. Immanent (generic) features of imitation money include a similar format of the monetary token. It is often pointed out that the reproduction of this element at a level similar to the original has a primary character in relation to the others. According to this assumption, if the reproduction has all the features of the monetary token, with the exception of comparable dimensions, it

excludes the counterfeiting of money. This leads to the conclusion that the criterion of maintaining a format that is similar to the original is of fundamental significance in terms of verifying further features of compliance and the level of imitation. Next, it is indicated that the image of the obverse and the reverse sides must be executed in a related way. It means that the counterfeit must only in general characteristics reflect the individual contours and elements of the illustration placed on the monetary token. The third element that is considered indispensable for the adoption of a counterfeit type is the generic compatibility of the base material and the appropriate colour. In this context, the findings of Nikolai Tagancew, who indicates that "even the absence (…) of an indication of their circulation value (…) does not exclude the resemblance of a counterfeit coin to an authentic coin, and so such a counterfeit must be considered a counterfeit coin", must be considered doubtful.[538] It seems that the reflection of the nominal value in the content of the counterfeit is one of the most important elements of the monetary token, the absence of which may exclude the responsibility of the perpetrator.

It is worth noting here that such an approach is not without controversy. This is due to the fact that its application *in concreto* may lead to divergent conclusions. On the one hand, we have an argument stating that where the determination of the quality of imitation is at a level that, due to mapping deficits, is not able to mislead anyone as to authenticity, means that there are no criminal consequences.[539] According to an alternative concept, there are grounds for holding the perpetrator to criminally liable for the implementation of the attempted form in the form of a criminal unsuccessful attempt. An important voice in the discussion in this context was taken by Oktawia Górniok, who pointed out that "in addressing this problem, it should first of all be taken into account that in a situation where a counterfeit or altered object has been released into circulation and the recipient has been misled, both the victim's experience and the circumstances in which it happened are irrelevant to the perpetrator's liability. The means used by them were undoubtedly suitable for committing a prohibited act (art. 13 § 2 of the p.c.)", and she summarized on her reasoning: "It would seem that his conduct should be regarded as an unsuccessful attempt only if such a counterfeit or altered object is not capable of misleading anyone under normal conditions, regardless of their discernment in this matter".[540] Taking into account the above reasoning, it is worth noting that the author did not decide that in all cases of "unsuccessful" counterfeiting of money, the construction of unsuccessful attempt should be applied. She only signaled such a possibility. In

[538] N. Tagancew, *op. cit.*, pp. 448–449.

[539] Judgment of the CA in Lublin of 24 April 2018, ref. II AKa 89/18, LEX nr 2490117; judgment of the CA in Rzeszów of 22 January 2015, ref. II AKa 116/14, KZS 2015, z. 6, item 94.

[540] O. Górniok, *Przestępstwa…*, *op. cit.*, p. 124.

her argumentation, she referred to one of the verification models to the convergence of the imitation with the original, which will be discussed later in the work. The argument of Kulik, who indicated that "it is a situation in which the perpetrator used such primitive means that it proves impossible to put money into circulation under any conditions. It is precisely here that we can see the possibility of using the construction of an unsuccessful attempt, an attempt because in fact the perpetrator failed to counterfeit or alter money or other means, and of an unsuccessful one, because they did so in such a way that it was impossible to counterfeit"[541] appears to be important for further findings. It is worth noting, however, that the firmness of his argument was accompanied by a cautious thesis that the field of application of the construction of an unsuccessful attempt is not wide, as it concerns only obvious cases of money counterfeiting.

Without prejudging this issue, due to the prior need to conduct an in-depth study of inept attempts that would exceed the framework and requirements of the present study, it should be noted that there are grounds for applying the institution included in the content of Art. 13 § 2 of the p.c. Alternatively, it cannot be ruled out that there is no threat to the legal good and the inability to perform an act under Art. 310 § 1 of the p.c. will result from the lack of an object or from the use of an unsuitable measure. To some extent, the degree of reproduction of the original monetary token may be taken into account. The diversity of the possibilities of using the construct of ineffective attempts also results in part from the characteristics of individual varieties of prohibited behaviour covered by Art. 310 § 1 of the p.c.

Secondly, it should be noted that in more recent studies authors avoid attempts to determine the limit of achieving a sufficient level of compliance with the original by means of references to specific elements of money. Therefore, a general formula was sought to exclude the recognition of the most glaring behaviours as perpetrated counterfeiting type. As a result, a reduction mechanism was created, eliminating those acts that do not give the counterfeit the appearance of authenticity, or create the possibility of it being considered an original. However, it is worth noting that the following diagram is only the first stage of assessing a given behaviour from the point of view of a set of elements of the type of money counterfeiting. Negative verification means stopping at trying to commit a prohibited act. The positive, on the other hand, does not predetermine the perpetration. It only allows the application of more advanced models, which will be discussed at further stages of this analysis.

When indicating the assumptions of the reduction scheme used at the first stage of the assessment, it is worth noting the thesis of Świda, who mentioned that

[541] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 16.

> the resemblance to the original must be such that it does not immediately arouse suspicion in every person at first glance. However, if both the size, drawing or printing of only one side of the paper, the counterfeit copy is so different from the original that it is immediately visible that it is not money or a security in circulation, then the production of such copies, e.g. for fun, is not counterfeiting within the meaning of art. 227 § 1, and whoever misled a naive person with such a copy may be held liable only for fraud under art. 205.[542]

Similar approach is voiced by Skorupka,[543] Błaszczyk,[544] Wojciechowski[545] and Ćwiąkalski.[546] When analyzing the model based on the above assumption, it is worth noting that a specific test of the lack of fundamental reservations as to the authenticity of money is based on the perceptual reception and reflection of basic external features of the imitation made available to the user of the financial system. This means that the occurrence of generic elements of a monetary mark allows *prima facie* to verify whether the counterfeit has a sufficient degree of similarity to a monetary token to talk about the implementation of the functional element. It is worth emphasizing that at the first stage the reference point for determining the sufficient convergence of imitation with circulation money is each user. This is an extremely broad formula of the recipient of money, which has been deprived of further detailing features (reasonable, experienced, average). This generates the need to carry out a selection at the stage of application of the law, which elements of the monetary token are so characteristic for each and every user that their absence leads to two types of consequences. First, the deficit of certain features of money should arouse the user's suspicion that they are dealing with an imitation. Secondly, the doubts that arise should be of such a high degree of intensity that they border on the belief in falsehood. It is worth noting here that the moment of their occurrence is relevant. The assessment of the degree of convergence with the original is also determined by the criterion of the time of reasonable objections, which should *de facto* coincide with the user's first contact with the monetary token.

Next, we should present the models developed in the doctrine and functioning on the basis of jurisprudence to verify the commission of the prohibited act, taking into account the degree of similarity of the imitation to the original. Clearly, as a result of the reduction performed at stage I, the assessment of the conformity of a counterfeit, which on the one hand, takes into account the generic characteristics

542 W. Świda, *Prawo…*, *op. cit.*, p. 619.

543 J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1820.

544 M. Błaszczyk [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1031.

545 J. Wojciechowski, *Ustawa…*, *op. cit.*, p. 66.

546 Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 934.

of money, and on the other hand, represents a level that does not raise immediate doubts as to the authenticity, even under unfavourable circumstances. In the course of the analysis, four models were revealed, which only slightly overlap in terms of their range. Three of the crystallized diagrams in the main part boil down to the construction of personalized comparative forms.

The argument devoted to the characteristics of individual models should be preceded by an indication of the focus on the level of imitation, which necessarily does not belong to any of the listed below. This is the view that maintaining any level of imitation representation that exceeds the threshold of the generic characteristics of money and the absence of fundamental doubts as to authenticity is not required to attribute liability for the committed money counterfeiting offence. This kind of concept is derived from judgments made in the times of the Second Polish Republic.[547] Piórkowska-Flieger's statement is aimed at the above. According to her, it should be considered unnecessary to look for additional models to verify the level of the produced imitation.

The first of the verification models is based on the personal model of an experienced participant of the financial system. This is not often an applicable scheme. Among the supporters of the model of an experienced money user was Leon Peiper.[548] According to him, we may speak of money counterfeiting when the degree of imitation is so high that in order to disclose the implementation of prohibited behaviour, meticulous verification of the external features of money or the use of specialized devices is required. Makarewicz also advocated the scheme of a careful, attentive user of money as a reference point for assessing the degree of similarity of imitation.[549] An attempt will be made whenever an experienced and meticulous financial market participant is able to reveal the inauthenticity of an imitation.

The second scheme is to use the model of the average user of money. It should be noted that this concept arose on the basis of judicial jurisprudence. The first reference to this personalized model can be found in the judgment of the Supreme Court.[550] It seems that the model of the average participant in the financial system should be considered rooted in the absence of the obligation to verify the authenticity of money as part of minor, everyday transactions. In addition, the decrease in the level of imitation necessary to perform the type compared to the first of the distinguished models results from the fact that the vast majority of entities participating in money trading are not specialists in the field of money security measures.

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[547] Judgment of the SC of 21 November 1928, ref. Kr 319/28, RPiE, z. 3, p. 396.

[548] L. Peiper, *Komentarz…*, *op. cit*., p. 375.

[549] J. Makarewicz, *Kodeks…*, *op. cit*., p. 417.

[550] Judgment of the SC of 17 December 1973, ref. I KR 260/73, PUG 1974, z. 5, p. 173; cf. Judgment of the SC of 3 Ocrober 1975, ref. IV KR 221/75, OSNKW 1975, z. 12, item 161.

To some extent, the application of the second model can be seen in the content of the judgment of the Court of Appeal in Warsaw.[551] In more recent case law, the average user standard was applied in a case heard by the Court of Appeal in Lublin, where in the judgment we read that

> it is not necessary to accept that there has been a counterfeiting of a legal tender that the counterfeit bears an exceptionally high resemblance to the original, so that only an experienced person can be misled. Also, a simple method of counterfeiting, e.g. using commonly available laser printers, constitutes the implementation of the provision of art. 310 § 1, because an average person can hypothetically, acting in trust, haste or distraction, consider a given object (money, legal tender, promissory note) to be authentic.[552]

In the argument presented by the court, the model of an average, ordinary participant in the financial system was associated with the element of trust in money as a reliable legal tender and the lack of the need to verify the authenticity of money when there are no justified needs for it. The standard of the average user of money, as a model of a person used in verifying the counterfeiting of money, is shared by some representatives of the doctrine. The above view was essentially shared by Andrejew, who slightly modified the pattern, by assuming that counterfeiting is committed when the perpetrator "produces objects so similar to money that an average experienced person, accepting such an object under normal circumstances, could not immediately realize its inauthenticity".[553] Modification of the standard approach is reduced to taking into account an additional element in the form of normal circumstances in which the personalized comparative form is to assess the level of mapping of the monetary token. The view of Andrejew has recently been referred to by Zawłocki.[554] The theses formulated by Buchała also contributed to the development of the discussed model. In the author's view, the attempted crime of counterfeiting will be the creation of an imitation easily recognizable by an average user of money. This means that the threshold for committing a prohibited act – in terms of the degree of convergence of the imitation in relation to the original – was placed between the possibility of recognizing the falsehood by a specialist and the relatively easy disclosure of the lack of authenticity. The model of the average user, in the version presented by Buchała, was shared by Góral[555] and Marek.[556]

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[551] Judgment of the CA in Warsaw of 25 April 2002, ref. II AKa 120/02, OSA 2002, z. 11, item 80.

[552] Judgment of the CA in Lublin of 21 December 2017, ref. II AKa 241/17, LEX nr 2448406.

[553] I. Andrejew, *Kodeks…*, *op. cit*., p. 203.

[554] R. Zawłocki, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit*., p. 766.

[555] R. Góral, *Kodeks…*, *op. cit*., p. 517.

[556] A. Marek, *Kodeks…*, *op. cit*., p. 573.

Turning to the analysis of the third model, it should be noted at the outset that this approach enjoys the greatest recognition among representatives of the doctrine[557] and is the most commonly applied one in the case law practice of Polish courts.[558] It is based on the personal pattern of an inexperienced money user. For the first time, this scheme was used on the basis of the jurisprudence of the Supreme Court.[559] It is worth highlighting a few elements in this context. Firstly, one of the foundations of this approach is the indication that the standard of an experienced money user – as a model template – is an inadequate level for verification of the level of imitation. Secondly, the Supreme Court creates, as a personified comparative form, an inexperienced user of money, i.e. an entity that does not even have an average knowledge of cash flow, lacks basic practice in dealing with money and is unfamiliar with the system of security features provided for the protection of money tokens. Thirdly, there is a lack of perpetration on the basis of this model when a personal pattern is able to immediately recognize a counterfeit of money. Relatively speaking, it can be said that an inexperienced user of money *prima facie* does not see grounds for questioning the authenticity of money. Importantly, on the basis of the third model, the relevant criterion for verifying the level of compliance with the original is not the recognition of the entity that is well, or even average-oriented in the appearance of money. In order to establish that counterfeiting has been committed, it is sufficient that the falsification reflects a degree of similarity such as to mislead, as to the authenticity, an inexperienced person.[560]

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[557] Synthesis found in: Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 933; M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *op. cit.*, pp. 1632–1634; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, pp. 1515–1516; B. Gadecki, *Kodeks…*, *op. cit.*, Legalis art. 310 nb 5; J. Satko, *Glosa do wyroku SA w Gdańsku z dnia 24 lutego 1993 r., sygn. II Akr 357/92*, „TSO" 1994, z. 10.

[558] Judgment of the SC of 5 February 2020, ref. IV KK 455/19, LEX nr 3079568; judgment of the SC of 26 July 1982, ref. I KR 321/81, OSP 1983, z. 7–8, item 161; judgment of the SC of 4 August 1977, ref. V KR 86/77, LEX No. 17007 ; judgment of the SC of 3 October 1975, ref. IV KR 221/75, OSNKW 1975, z. 12, item 161; judgment of the SC of 7 January 1961, ref. II K 581/59, OSPiKA 1963, z. 3, item 73; judgment of the SC of 5 May 1938, ref. 2 K 197/38, Głos Sąd. 9/38, p. 741; judgment of the SC of 4 June 1934, ref. II C 608/34, UN (K) 1935, z. 1, item 10; judgment of the CA in Warsaw of 19 October 2018, ref. II AKa 192/18, LEX nr 2584526; judgment of CA in Warsaw of 12 October 2016, ref. II AKa 149/16, LEX nr 2171257; judgment of CA in Lublin of 27 March 2013, II AKa 40/12, LEX nr 1298954; judgment of CA in Kraków of 8 March 2005, ref. II AKa 35/05, LEX No. 150447; judgment of the CA in Lublin of 7 June 2004, ref. II AKa 131/04, Prok. i Pr.-wkł., 2005, z. 3, item 23; judgment of the CA in Kraków of 8 March 2005, ref. II AKa 35/05, KZS 2005/4, item 32; judgment of the CA in Gdańsk of 24 February 1993, ref. II AKr 357/92, OSP 1994, z. 10, item 188.

[559] Judgment of the SC of 4 June 1934, ref. II C 608/34, UN (K) 1935, z. 1, item 10.

[560] M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski (red.), *Kodeks…*, *op. cit.*, p. 536; judgment of the SC of 4 August 1977, ref. V KR 86/77, LEX No. 17007; judgment of the SC of 7

The fourth of the distinguished models breaks away from the user of money as an exemplary personal model, in favour of valuing the perpetrator's act through the prism of the circumstances in which the counterfeit is put into circulation. Interestingly, according to this approach, the appropriate level of similarity of imitation to the authentic carrier of the legal good seems to come to the background. Taking into account the specificity of this concept, its assumptions should be traced. In this context, the theses functioning in the literature on the subject seem to derive from and follow the findings of judicial jurisprudence.[561] The arguments presented in the above-mentioned case-law provided an argumentative basis for common courts when issuing subsequent decisions.[562] It is worth noting that one can also find references to this concept among the representatives of doctrine. For example, a reference to the indicated model can be found in Górniok, who indicated that "when the counterfeit or processed object was released into circulation and the recipient was misled, both the victim's experience and the circumstances in which it happened are of no relevance for the perpetrator's liability. The means used by them were undoubtedly suitable for committing a prohibited act (art. 13 § 2 of the p.c.)".[563] On the basis of the above arguments, we see a relatively strong emphasis on the nature of the circumstances in which the imitation is released into circulation. In the opinion of the Supreme Court and representatives of doctrine, this may be the leading criterion, thus, leading to a reduction in the role, and sometimes even excluding the need to assess the level of imitation. With this assumption, the creation of imitation far from perfect may lead to criminal liability for money counterfeiting, because there were circumstances conducive to its circulation. The applicability of this model is, therefore, characterized by a much wider scope than the remaining approaches. With regard to these imitations, which are characterised by a negligible degree of convergence with the original, the lack of favourable conditions for the release of a primitive counterfeit into circulation seems to exclude liability for the crime committed. In this case, the level of reproduction of the original becomes meaningless. However, it is doubtful whether the circumstance of circulating the counterfeit, which falls outside the prohibited act under Art. 310 § 1 of the p.c., should be relevant to the scope of liability. In the case of competition between assessments of the same act, this seems feasible. In other cases, these circumstances should be taken

January 1961, ref. II KK 581/59, OSPiKA 1963, z. 3, item 73; judgment of the CA in Kraków of 8 March 2005, ref. II AKa 35/05, LEX No. 150447.

[561] Judgment of the SC of 1 February 1988, ref. II KR 7/88, OSNPG 1989, z. 1, item 9.

[562] Judgment of the CA in Warsaw of 8 May 2013, ref. II AKa 124/13, LEX nr 1322728; judgment of the CA in Kraków of 8 March 2005, ref. II AKa 35/05, KZS 2005, z. 4, item 32; judgment of the CA in Lublin of 7 June 2004, ref. II AKa 131/04, Prok. i Pr.-wkł., 2005, z. 3, item 23; judgment of the CA in Warsaw of 25 April 2002, ref. II AKa 120/02, OSA 2002, z. 11, item 80.

[563] O. Górniok, *Przestępstwa…*, *op. cit.*, pp. 123–124.

into account on the basis of the offense under Art. 310 § 2 of the p.c., and the release of imitations into circulation does not belong to the essence of the discussed type.

Before summarizing this part of the analyses, it is worth embedding the legal and comparative models used in Poland. On the basis of the Swiss doctrine of law, the prevailing position is that one should not set too high requirements in terms of the level of representation. This approach is motivated by the lack of a universal obligation to verify the authenticity of money in everyday transactions.[564] When assessing the set of constituent element of the type of offence, the persuasiveness of the counterfeit is taken into account, taking into account the likelihood of its confusion with the authentic value. There is still a need to subjectify this assessment. It is, therefore, assumed that the produced imitation must be so similar to the original as to mislead the average unsuspecting person.[565] This means that the creation of an imitation, the inauthenticity of which is found at first glance, excludes the liability for the offence under Art. 240 sec. 1 of the Sw.p.c. in the form of its commission.[566] In Germany, on the other hand, a counterfeit should represent a level that, in ordinary transactions, poses a risk of misleading an unsuspecting person.[567] Imitation is not required to remain at a high level. For the attribution of liability for money counterfeiting, it is sufficient that the counterfeit gives the impression of being issued and put into circulation as a legal tender by a competent national or foreign authority. The criminalisation of the creation of imitations with a low level of convergence with the original results from the lack of an obligation to verify the authenticity of monetary tokens at each transaction.[568]

Summing up the analyses so far on the level of imitation, it is agreed that the varieties of prohibited conduct include: counterfeiting, alteration or removal of the sign of redemption from money. Each of the verb elements in its semantic layer refers to an unspecified level of compliance with the original. The idea is that the resulting imitation could be regarded as an authentic monetary token; or it would create a semblance of authenticity. The basic task of the representatives of the doctrine of law and the adjudicating courts in this regard is to decode the binding level of mapping that justifies the prosecution and the scope of criminal liability for behaviours that create a threat to the object of protection. As the analysis demonstrated, the reflection of the generic characteristics of money is only part of the first stage of control of the act in the process of crime. The statement of such components as the shape, colour or

564 M.A. Niggli, *op. cit.*, Art. 240 N 16.

565 M.A. Niggli, *op. cit.*, Art. 240 N 17; G. Stratenwerth, F. Bommer, *op. cit.*, § 33 N 5.

566 S.B. Kim, *op. cit.*, p. 72; M.A. Niggli, *op. cit.*, Art. 240 N 17; C.L. Meili, S. Keller, *op. cit.* p. 1726.

567 I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *op. cit.*, § 146 N 3 et seq.; V. Erb, *op. cit.*, pp. 781–783.

568 W. Stree, [in:] A. Schönke, H. Schröder (Hrsg.), *op. cit.*, p. 1181.

format similar to the original should be supplemented with the absence of *prima facie* occurrence, in any participant of the financial system, of doubts as to the authenticity of the imitation. Their absence justifies liability for attempting to counterfeit money. Positive findings at this stage do not mean that the perpetrator has completed a set of elements of type, but allow for further control, using the developed verification models. Moreover, the developed schemes, which are basically based on personalized comparative forms, were analyzed. Personal patterns refer to the user of money, with a certain amount of knowledge and insight in money trading. The dominant character in doctrinal considerations and jurisprudential analyses is the model of an inexperienced user of money. This means that, according to the majority position for assigning the set of type elements under Art. 310 § 1 of the p.c., it is necessary to find that the imitation demonstrates such a degree of reproduction of the original as to mislead, as regards its authenticity, an inexperienced participant of the financial system. Failure to exceed this limit leads to responsibility for the accomplished attempt or may lead to the application of the structure described in Art. 13 § 2 of the p.c. Such a reference point – as a personal model – seems appropriate and deserves approval. In fact, it allows for the recognition of all those prohibited acts that lead to the creation of imitations with a reasonable level of reproduction of the original as perpetrated. It also does not set an excessively strict regime of imitation level, thus, ensuring an adequate scope of protection for the normative foundations of the financial system.

§ 3. The object of the executive action

The object of the executive action of the prohibited act was typified in Art. 310 § 1 of the p.c. as Polish or foreign money, Polish or foreign monetary token, which has been established as a legal tender, but has not yet been put into circulation, another legal tender or a document entitling to receive a sum of money or containing the obligation to pay capital, interest in profit or a statement of participation in a company. Such a defined circle of objects of direct action requires narrowing from the point of view of the subject of the present work. The object of analysis and reference point on the basis of the type under Art. 310§ 1 of the p.c. constitutes money. This means that falls basically outside the scope of our interest, is the issue of documents indicated *in fine* in the content of Art. 310 § 1 of the p.c. In principle, a number of examples from judicial jurisprudence, or indicated in the literature on the subject in relation to securities, translate into the protection of money. Moreover, outside the research area of work there is an issue of other legal tenders. The exclusion of this group is understandable. These tenders, although they are characterised by a general and unlimited capacity to redeem pecuniary obligations, are not money within the meaning of criminal law. This is due to the legislator's eloquent decision to separate from the group of legal tender, not just money, but also other legal tenders. Nevertheless, as a result of the ambiguity

of money on the basis of the legal system – which will be discussed later in the work – it is necessary to verify whether cashless money, electronic money and virtual currency are among the designations of the "money" element within the meaning of Art. 310 § 1 of the p.c. *Prima facie*, such an interpretation is not impossible. This topic will be the subject of our further analysis. However, it is worth noting at this point that as a result of the normative change of Art. 115 § 9 of the p.c. and supplementation of the content of the aforementioned provision with "pecuniary tender stored in the account", the existing optics on bank money is modified, leading to the conclusion that it is not money within the meaning of the type in question. In the light of the above, the decision to analyse a monetary token which has been established as a legal tender but which has not been put into circulation may be controversial but may be justified. The motive for expanding the research area with the indicated element is the fact that money and the monetary token come from a common semantic core. They differ in the "stage" on their way to being in circulation. It should also be emphasized that only their joint characteristics and assessment can lead to verification whether the scope of criminal law type protection is comprehensive and, at the same time, complete.

1. Polish or foreign money

The detailed analysis should be preceded by a general note. In the wording of Art. 310§ 1 of the p.c. the legislator clearly stated that criminalisation includes the implementation of varieties of prohibited conduct against Polish or foreign money, or a Polish or foreign monetary token that has been established as a legal tender, but has not yet been introduced into circulation. This means that the will of the legislator is to introduce uniform protection for both native and foreign values. The overwhelming impact on the application of coherent legal solutions in the field of money security was due to the potential negative consequences for the economy, in case of the functioning of counterfeits in trade. Wacław Makowski, who draws attention to the economic relations between states, the implementation of the economic policy of the state, trust in the coin functioning in circulation as a factor constituting an inducement to introduce the normative foundations of homogeneous protection of money, in isolation from the country of its issuance, further supports this.[569] The application of uniform protection cannot be conditional on the guarantee of statutory or contractual reciprocity.

In initiating the characteristics of the carrier of a legal good, it should be noted that the legal system lacks legal definition of money. This means that, first of all, attention should be paid to the meaning rules functioning within the Polish language. According to the dictionary, money is "a legal tender accepted in exchange for

[569] W. Makowski, *Kodeks…*, *op. cit*., p. 7.

goods and services or redeeming from obligations".[570] The above definition allows to state that money is a subset of legal tenders. In view of such a wide range of meanings, it is necessary to further clarify this term. We find an attempt to narrow the dictionary approach in the reference to the functions assigned to money. In this context, it is worth noting the judgment of the Supreme Court, where it was pointed out that "the characteristic feature of money is its significance in the economic circulation, as a representation of a certain value".[571] The criterion of the value measure, as one of the specific functions of money, was also distinguished by Siwik.[572] The above topic was detailed by Oczkowski, who expressed the view that money is a specific movable thing with the ability to redeem liabilities, which is a measure of value and a means for accumulating savings.[573] Discrepancies in the range of distinguished and accepted functions of money indicate that this criterion is a questionable point of reference. It does not allow for distinguishing money among the categories of legal tenders, based on certain, firm determinants.

When initiating the thread devoted to the definition of a monetary token, it should be noted that the content of Art. 31 of the Act on NBP[574] includes the legal definition of a monetary token. It is characterized by a range character by indicating that the monetary tokens of the Republic of Poland are banknotes and coins denominated in złoty and grosz. On the basis of doctrinal considerations, it is indicated that the monetary token is treated as movable property, in the content of which the monetary unit is expressed,[575] i.e. the carrier[576] of the monetary unit or the monetary sum.[577] In addition, it is referred to as the tangible form of cash money,[578] the tangible form of a monetary unit,[579] or the medium of information and value.[580] The subject-matter of the dispute was whether an entry in the bank books could be regarded as

[570] S. Dubisz (red.), *Wielki słownik języka polskiego PWN, t. 3*, Warszawa 2018, p. 460.

[571] Judgment of the SC of 9 October 1934, ref. 2K 982/34, Zb.O. 1935, z. 4, item 152; cf. Judgment of the SC of 3 May 1967, ref. I KR 54/67, OSPiKA 1967, z. 12, item 298.

[572] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, pp. 1649–1650.

[573] T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks…*, *op. cit.*, p. 1422.

[574] The Act of 29 August 1997 on the National Bank of Poland (Journal of Laws of 1997, No. 140, item 938).

[575] P. Machnikowski, [in:] E. Gniewek, P. Machnikowski (red.), *Kodeks…*, *op. cit.*, Legalis art. 358, nb 2.

[576] S. Grzybowski, [in:] W. Czachórski (red.), *System…*, *op. cit.*, p. 448; M. Bednarek, *Mienie…*, *op. cit.*, p. 73; M. Olechowski, *Normatywne podstawy przymusowego umarzania zobowiązań pieniężnych*, „PiP" 2004, vol. 5, p. 75.

[577] T. Dybowski, A. Pyrzyńska, [in:] E. Łętowska (red.), *System…*, *op. cit.*, p. 263.

[578] T. Borkowski, *Znaki pieniężne*, Warszawa 1996, p. 8.

[579] S. Grzybowski, [in:] W. Czachórski (red.), *System…*, *op. cit.*, p. 445.

[580] T. Sokołowski, [in:] M. Gutowski (red.), *Kodeks cywilny, t. I. Komentarz do art. 1–352*, Legalis, art. 45, nb 22.

a monetary token. According to the first approach, referring to the content of Art. 31 of the Act on the NBP, it is argued that such an interpretation is excluded.[581] The thesis of Zbigniew Żabiński, who justified his view by assuming that an entry in the bank account reflects the obligation relationship between the parties to the bank account agreement,[582] is aimed at supporting the above. On the other hand, Zdzisław Fedorowicz considered that an entry in the bank account had an equivalent status with cash tokens.[583] The first of the distinguished positions appears to be correct, which identifies the monetary token with the banknote and coin within the meaning of Art. 31 of the Act on the NBP. Such an approach does not deprive the findings of the civil law doctrine of the recognition of a monetary token as a *sui generis* movable asset, constituting a carrier of a monetary unit. The basis for further considerations will therefore be the narrow approach to money (money *sensu stricto*). For the sake of clarity, it should be indicated that the expression of the above view at this stage of our analyses does not yet exclude the treatment of non-cash money (banking and electronic) as money under criminal law. The issue so outlined will be resolved later.

Initiating considerations regarding the interpretation of money as a constituent element of a type of offense under Art. 310 § 1 of the p.c., first of all, it should be decided whether the above wording should be understood on the basis of *ius penale* as in other branches of law (in particular civil law), or whether this term has an autonomous meaning, resulting from the need of criminal law to perform its functions. At this stage of the discussion, two alternative approaches are noticeable. The first one refers to a uniform understanding of phenomena and institutions that are common to different branches of law. This conclusion is motivated by the directive of terminological implications and the coherence of the legal system. In this context, it is worth noting the guidance formulated by Lech Morawski, who, referring to the application of a legal definition from another branch of law, recommends taking into account the place of the interpreted provisions in the legal system and referring to the functional interpretation.[584] The failure to apply a universal definition, applicable on the basis of various branches of law, is, in the opinion of Zygmunt Ziembiński, one of the most striking examples of the disintegration of the science

[581] For a synthesis: M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *op. cit.*, pp. 878–879; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1516; J. Giezek, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 896; P. Daniluk, [in:] R.A. Stefański (red.), *Kodeks karny. Komentarz*, Warszawa 2018, p. 753; O. Górniok, *Przestępstwa…*, *op. cit.*, p. 126.

[582] Z. Żabiński, *Umowa rachunku bankowego*, Warszawa 1967, p. 58.

[583] Z. Fedorowicz, *Pieniądz w gospodarce socjalistycznej*, Warszawa 1962, p. 119.

[584] L. Morawski, *Zasady wykładni prawa*, Toruń 2006, p. 120; P. Wiatrowski, *Dyrektywy wykładni prawa karnego materialnego w judykaturze Sądu Najwyższego*, Warszawa 2013, p. 10 et seq.

of law and the reason for divergent decisions in judicial jurisprudence.[585] According to an alternative concept, since money is a complex phenomenon that resonates in different branches of law, it may be justified to have a divergent understanding of the term and to define it in a specific way within the framework of individual legal acts.[586] This is due to the fact that money functioning in circulation is important both for the legal system as a whole and for the general-abstract norm contained in a specific normative act.[587] What is interesting, sometimes the meaningfulness and desirability of creating a general – common to all branches – definition of money is questioned. The above postulate is justified by the observation that the standards of conduct determine the legal relations arising against the background of a given section of reality and their diversity may lead to a different understanding of the same term.[588] Acceptance of the above leads to the admissibility of functioning, within a single system, of several equivalent definitions of money.

In response to the above, it should be noted that it is possible to deviate from the requirements of the directive of terminological consequences and coherence of the system. However, this requires specific justification. A departure from the uniform interpretation applicable on the basis of another branch of law constitutes an acceptable interpretative procedure when it is motivated by the conceptual autonomy of a given field of law or the need to perform specific tasks or functions. In addition, when making a criminal interpretation and determining the meaning of the term "money", it is necessary to refer to the *ratio legis* underlying the criminalisation of behaviours included in Chapter XXXVII of the Penal Code. Given the progressive dematerialisation of the basic institutions of legal transactions, it seems indispensable to also apply a dynamic interpretation. Taking into account the differences of interpretation on the basis of constitutional law and civil law regarding money, it is necessary to note the attempts made in the doctrine of criminal law to explain the element of the object of the executive action. Verifying the views expressed will allow us to present our own position on this subject.

The overview of the positions should be initiated with a certain observation. In the dogmatics of criminal law, there is a double themed discussion in defining money. Importantly, the existing divergence concerns not only the interpretation of money as an element of the type in question under Art. 310 § 1 of the p.c., but understanding this term on the basis of the entire normative act. The first approach boils down to the thesis that money should be understood as a monetary token with

[585] Z. Ziembiński, *Metodologiczne zagadnienia prawoznawstwa*, Warszawa 1974, p. 269.

[586] C. Herrmann, C. Dornacher, *International and European Monetary Law. An Introduction*, Cham 2017, p. 2

[587] G. Żmij, *Prawo waluty*, Kraków 2003, p. 38.

[588] Z. Żabiński, *Istota prawna jednostki pieniężnej*, „Studia Cywilistyczne" 1965, t. VI, pp. 236–237.

qualified features. On the other hand, an alternative concept is based on identifying money with the definition of currency functioning on the basis of the Foreign Exchange Law Act.[589] Without anticipating further findings, it should be pointed out that the first of the selected views has a dominant character in the subject literature and is not contested in court case law.[590]

Pointing out individual positions within the first approach, we should highlight the view of Górniok, who assumed that

> the name of Polish money is equivalent to the name of "the monetary token of the Republic of Poland", as used in the act of 29.11.1997 on the National Bank of Poland (…) recognizing in art. 31 of this act, that the designations of this name are banknotes and coins denominated in złoty and grosz. Pursuant to art. 32 of this act, the legal tender in the territory of the Republic of Poland are such tokens issued by the NBP.[591]

The conclusions formulated by the author require attention, because when characterizing money on the basis of criminal law, reference was made in the description structure to the construction of a legal tender within the meaning of Art. 32 of the Act on the NBP. Such an approach to the subject of the executive action is shared, among others, by Piórkowska-Flieger,[592] Marek,[593] Siwik[594] and Paweł Daniluk.[595] We find further detailing of the original concept by Górniok in the views of Skorupka. This author, developing the concept of the former researcher and pointing to a narrow and broad approach to money, assumed that "in the crime under art. 310 p.c. the term money should be understood as only one of the current forms of money, namely circulating money issued by the NBP in the form of banknotes and coins, denominated in złoty and grosz".[596] In this context, it is worth exposing the most important elements of Skorupka's assumptions. First, it seems essential for the recognition of money that the competent authority carries out the issue process correctly. Secondly, the author, although failing to express this explicitly here, refers to the structure of the legal tender pursuant to Art. 32 of the Act on the NBP. Thirdly,

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589 The Act of 27 July 2002, Foreign Exchange Law (Journal of Laws of 2002, No. 141, item 1178).

590 For the sake of clarity, it should be noted that a full overview of the positions will be reflected *de facto* in the circular nature of money. It is so, as the clue of the dispute boils down to this issue.

591 O. Górniok, *Przestępstwa…*, *op. cit.*, p. 126.

592 J. Piórkowska-Flieger, [in:] T. Bojarski (red.) *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

593 A. Marek, *Kodeks…*, *op. cit.*, p. 572.

594 Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, pp. 1649–1650.

595 P. Daniluk, *op. cit.*, p. 753.

596 J. Skorupka, *Prawo karne gospodarcze. Zarys wykładu*, Warszawa 2007, p. 169; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, pp. 774–778; idem, *Pojęcie…*, *op. cit.*, pp. 52–56.

in his opinion, money should be of a circular nature. This view was approved by Jacek Giezek[597] and Ćwiąkalski.[598] In turn, Gałązka points out that the provisions of the Act on the NBP do not define the term "money", but determine the understanding of the monetary token. At the same time, the author signals that in her opinion, the definition of money is closer to the characteristics of a monetary unit than that of a monetary token.[599] Against the background of the above division, the position of Błaszczyk should be considered unspecified, with the author stating that "money is monetary tokens (banknotes and coins) constituting a legal tender, currently in circulation (cf. art. 2 PrDew)".[600] The lack of transparency of the reasoning boils down to the reference to both the legal tender institution and the issue of currency.

According to an alternative approach, money under criminal law is defined by reference to the understanding of the currency indicated in Art. 2 sec. 1 item 7 of the Foreign Exchange Law Act. Such an approach to the subject can be seen in the theses by Kulik,[601] Jacek Kędzierski[602] and Łabuda.[603] Kulik indicates that "the concept of money corresponds to the concept of currency within the meaning of art. 2 sec. 1 item 7 of the Act of 27.07.2002".[604] He detailed his argument by assuming that "money is a monetary token. The monetary tokens are banknotes and coins. These are money tokens in circulation or withdrawn from it, but still subject to exchange (art. 2 sec. 1 point 7 of the Foreign Exchange Law)".[605] Without deciding at this point, which of the alternative approaches deserves approval and should constitute the basis for the reconstruction of the element of the object of the enforcement action, it should be noted that the common element of both concepts is a reference to the construction of the legal tender and its features. The divergence of positions, in turn, boils down to the question of the circular nature of money. On the basis of the first position, this element is considered indispensable. According to the second, money can also be understood as a monetary token withdrawn from circulation. Both are research issues that require analysis.

The concept of legal tender is a term known to Polish legislation. On the basis of the Polish legal system, the reference to the above wording can be found in the content of Art. 32 of the act on the NBP. According to its content, the monetary

[597] J. Giezek, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 896.

[598] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 941.

[599] M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, pp. 878–879.

[600] M. Błaszczyk, [in:) M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1037.

[601] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[602] J. Kędzierski, *Uwagi dotyczące „pojęcia pieniądza w przestępstwie z art. 310 k.k." (w związku z artykułem J. Skorupki)*, „Prok. i Pr." 2008, z. 7–8, pp. 73–74.

[603] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1516.

[604] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 115 § 9 teza 4.

[605] *Ibidem*, LEX/el art. 310 teza 3.

tokens issued by the National Bank of Poland are a legal tender in the territory of the Republic of Poland. The monetary tokens of the Republic of Poland are banknotes and coins that are denominated in złoty and grosz. The characteristics indicated in the content of Art. 32 of the Act on the National Bank of Poland allows, first of all, to appeal to the public law nature of the legal tender. When looking for the essence of money understood as a legal tender, it is impossible not to notice the role of the state and the law it establishes in this regard. In the first place, it is worth noting that the mechanisms created within the state structures are to ensure stability, security and trust in the public finance sector and the financial system.[606] Such a defined objective is a consequence of the NBP's constitutionally expressed obligation to protect the value of Polish money and to maintain care for price stability.[607] It manifests itself primarily in the indication that only the central bank of the state has the legal protection required to carry out the issue of monetary tokens of the Republic of Poland.[608] This leads to the conclusion that the public law nature of money can be inferred from the fact that the act of issue and marketing was performed by a competent constitutional authority of the state. The aforementioned element, in particular, is emphasized by the criminal law theoreticians when defining money. Skorupka drew attention to the special importance of the issuer in the correct decoding of the element of the object of the executive activity, indicating that "the concept of Polish money referred to in art. 310 of the p.c., should be understood solely as the monetary tokens of the Republic issued by the NBP".[609] The reference to the indicated criterion is also visible in Giezek's thesis, who indicated that "their value does not result from their physical properties, but from their definition and the guarantees provided by the state".[610] The public law nature of money as a component of the definition of money on the ground of criminal law, can be found in the assumptions of Świda[611] and Siwik.[612] This is not the only element worth noting. It is necessary to refer to the payment function attributed to money, which boils down to playing the role of a medium of exchange. This generates the need for the legislator to include the obligation to accept money in the law.[613] From a different perspective, it is agreed that money is *de facto* the legal tender, which is based on the monetary system in force

[606] A. Nowak-Far, P. Zapadka, *Nauka o pieniądzu i funkcje banku centralnego*, [in:] A. Nowak-Far (red.), *Finanse publiczne i prawo finansowe*, Warszawa 2017, p. 42.

[607] *Ibidem*.

[608] *Ibidem*, pp. 41–42.

[609] J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit*., pp. 773–774.

[610] J. Giezek, [in:] J. Giezek (red.), *Kodeks…*, *op. cit*., p. 896.

[611] W. Świda, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit*., p. 725; idem, *Prawo…*, *op. cit*., p. 619.

[612] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit*., pp. 1649–1650.

[613] Ch. Proctor, *Mann and Proctor on the Legal Aspect of Money*, Oxford 2012, pp. 11–12.

in the country.[614] The above argumentation makes it possible to state that on the basis of the Polish legal system, money has a public law character. This circumstance manifests itself both in the listing of the designations of money and the boundaries of this term. Consequently, money should be understood only as monetary tokens constituting the legal tender of a given state. This leads to the conclusion that the so-called private money cannot be understood as money.[615] This conclusion is obvious when one takes into account the lack of legitimization on the part of the State for such a measure of value.[616] From the content of Art. 32 of the Act on the NBP, we can deduce another relevant feature of the legal tender. A common practice is to try to explain the institution in question by referring to the obligation to accept the monetary token and the consequences for the creditor[617] resulting from their refusal to do so.[618] Another important element of the legal tender, which is the compulsory power to redeem monetary liabilities, is derived from the above characteristics.[619] This issue, however, raises objections among the representatives of the doctrine of law.[620] This element is also highlighted in the doctrine of criminal law. In this context, it is worth pointing out the view of Jerzy Śliwowski, who referred to the official criterion of the universal nature of a legal tender in the form of money.[621] In addition, it is worth noting the statement of Buchała, who considered system's own money or that of another system as the subject of an executive action, defining it as a legal tender admitted to money trading, with a guarantee of value and an obligation to

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[614] J. Wasilkowski, *Zagadnienie nominalizmu pieniężnego w orzecznictwie polskim*, „PiP" 1948, vol. 4, pp. 21–22.

[615] M. Stwoł, *Prawo walutowe Unii Europejskiej*, [in:] A. Drwiłło, A. Jurkowska-Zeidler (red.), *System prawnofinansowy Unii Europejskiej*, Warszawa 2017, p. 42.

[616] K. Zacharzewski, *Bitcoin jako przedmiot stosunków prawa prywatnego*, „MoP" 2014, vol. 21, p. 1135.

[617] T. Dybowski, A. Pyrzyńska, [in:] E. Łętowska (red.), *System…*, *op. cit.*, p. 264; G. Żmij, *op. cit.*, pp. 38–39.

[618] A. Olejniczak, [in:] A. Kidyba (red.), *Kodeks cywilny. Komentarz, t. III: Zobowiązania – część ogólna*, LEX/el, art. 358, teza 16; Z. Radwański, A. Olejniczak, *Zobowiązania – część ogólna*, pp. 61–62; T.R. Smus, *Spełnianie świadczeń pieniężnych za pomocą pieniądza elektronicznego*, Warszawa 2010, p. 36; Resolution of the SC of 14 February 2002, ref. III CZP 81/01, OSNC 2002 vol. 11, item 131.

[619] P. Zawadzka, U. Banaszczak-Soroka, P.S. Stanisławiszyn, D. Wojtczak-Samoraj, [in:] P. Zawadzka (red.), *Ustawa o Narodowym Banku Polskim. Komentarz*, LEX/el art. 32 teza 4.

[620] It is worth noting the view of Olechowski, who notes that Art. 32 of the Act on the NBP may not constitute a normative legal basis for the compulsory power of redemption of monetary obligations by legal tenders. In addition, he also emphasizes that only the legal tender's ability to redeem monetary obligations can be derived from this provision, without indicating either a specific quantifier or an obligation to accept it, see M. Olechowski, *op. cit.*, pp. 71–74.

[621] J. Śliwowski, *op. cit.*, p. 488.

accept it in money trading.[622] These views deserve to be taken into account. It seems that a reasonable, rational legislator, when constructing the legal tender, took into account both the compulsory nature of the redemption of an obligation by way of payment and the obligation to accept it. In addition, it is worth noting the statement of Daniluk, who, defining money for the purposes of criminal law, signalled that "at the same time, it must be emphasized that the value of money is not the result of its natural physical properties, but of the power granted to it by the State to redeem monetary obligations".[623]

The issue of the possibility of conducting effective and binding monetary settlements with the use of money appears to be an important feature of money. In this element, the threat caused by the attack by the perpetrator seems to be the most visible. It is difficult to talk realistically about creating a danger to the normative foundations of the financial system, in particular to money and payment transactions involving it, if the legal tender was to be devoid of a circulating character. Makowski advocated the circular nature of money, pointing out that counterfeit money must have circulation in the country.[624] Otherwise, it does not constitute a carrier of a legal good within the meaning of the analyzed type. Next, it should be noted that the issue of the circular nature of money is of interest to the judicature. Of fundamental importance – not only for the practice of applying the law – was the resolution of the Supreme Court, which with its eloquence and argumentation determined the direction of criminal law interpretations regarding the counterfeiting of money. In the above judicature, it was stated that "the object of the executive action of the offence referred to in art. 227 § 2 of the p.c., may not be – as not having the quality of legal tender – money withdrawn from circulation, even if it is subject to exchange at a bank".[625] Moreover, the Supreme Court, referring to the circular nature of money, pointed out that its criminal law protection makes the deepest sense when it concerns the trading of cash in connection with the sale, settlement of receivables, purchase of goods or services. Górniok's statement is aimed at supporting the above, in that she indicates that "money withdrawn from circulation, even if it is exchanged at a bank, may not be the object of the execution of the offences in question, since it has ceased to be a legal tender".[626] This view – based on the indicated resolution of the Supreme Court – gained favour with a significant part of the doctrine of criminal law. It was approved, among others, by Góral,[627] Marek,[628]

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622 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 223.
623 P. Daniluk, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 753.
624 W. Makowski, *Kodeks…*, *op. cit.*, p. 6; idem, *Prawo karne. O przestępstwach…*, *op. cit.*, p. 225.
625 Resolution of the SC of 15 May 1997, ref. I KZP 9/97, OSNKW 1997, z. 7–8, item 58.
626 O. Górniok, *Przestępstwa…*, *op. cit.*, p. 126.
627 R. Góral, *Kodeks…*, *op. cit.*, p. 518.
628 A. Marek, *Kodeks…*, *op. cit.*, p. 572.

Piórkowska-Flieger,[629] Błaszczyk,[630] Skorupka[631] and Ćwiąkalski.[632] The different perspective, referring to the definition of currency under the Foreign Exchange Law, is preferred by Kulik,[633] Łabuda[634] and Kędzierski.[635]

In the above context, it is worth confronting the Polish perspective with the views functioning in other legal orders. In Germany, money means any legal tenders which have been certified by the state or an authority authorised to do so and intended for public circulation, in isolation from the general obligation to accept it. In this context, the exchange rate of the currency or the possibility of its voluntary or forced redemption is irrelevant. However, the condition is the fact of its formal issue by a given country.[636] The prevailing view is that money remains a legal tender until it is formally withdrawn by means of a specific state act.[637] This means that money is the carrier of the legal good of a given type of a prohibited act for as long as banks and other entities are obliged to exchange it. The status of money still exists – despite the formal decision to withdraw it from circulation – because what is significant is the right to exchange this legal tender. The existence of this right justifies the criminalisation of money withdrawn from circulation, since it provides the basis for its continued usefulness in economic transactions.[638] In Switzerland, on the other hand, money is to be understood as any legal tender issued by the State at the legal rate.[639] In the literature on the subject, this allowed a distinction to be made between money *sensu stricto*, comprising only legal tenders with an exchange rate and an obligation to accept them, and *sensu largo*, which includes other tenders functioning in economic turnover.[640] From the point of view of counterfeiting attacks metal money,

[629] J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[630] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, pp. 1034–1037.

[631] J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1826; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1632; idem, *Przestępstwa…*, *op. cit.*, pp. 15–16.

[632] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 941.

[633] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[634] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1516.

[635] J. Kędzierski, *Uwagi…*, *op. cit.*, pp. 69–70.

[636] U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 1; W. Ruß, *op. cit.*, pp. 9–10; V. Erb, *op. cit.*, p. 777.

[637] I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (red.), *op. cit.*, § 146 N 8; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (red.), *op. cit.*, § 146 N 4a; W. Geisler, *op. cit.*, pp. 497–515; H. Otto, *op. cit.*, § 75 N 3.

[638] V. Erb, *op. cit.*, pp. 779–780; W. Ruß, *op. cit.*, p. 11; T. Fischer, *op. cit.*, p. 1060.

[639] A. Donatsch, W. Wohlers, *op. cit.*, p. 109; E. Hafter, *op. cit*, p. 572; S. Trechsel et al., *op. cit.*, Art. 240 N 2.

[640] S.B. Kim, *op. cit.*, p. 9 et seq.; M.A. Niggli, *op. cit.*, Art. 240 N 49; C.L. Meili, S. Keller, *op. cit*. pp. 1720–1721.

paper money and banknotes, which constitute legal tender, are relevant, i.e. they are used to redeem monetary debt with the effect of releasing the obligation of debtor.[641]

Taking into account the positions of representatives of Polish and foreign law, it seems that the characteristics of money on the basis of criminal law by reference to the construction of a legal tender with a circular character is more convincing. Referring to the object of protection, it is agreed that the criminal law protection of money finds the deepest meaning and confirmation when it concerns such monetary tokens that participate in trading. The legal good can be endangered only by attacking the tender involved in the functioning of the financial system. In the cited resolution, the Supreme Court indicated that turnover should be understood broadly as "turnover of cash in connection with the sale, settlement of receivables, purchase of goods or services".[642] It is worth pointing out that the above issue does not apply to such monetary tokens that have been withdrawn from circulation, even when it is still possible to exchange them. In addition, it seems that on the basis of Art. 310 § 1 of the p.c., the legislator made a clear distinction. In the content of the provision, it mentions only Polish or foreign money, while being aware of the existence of the term "currency" used under the Foreign Exchange Law Act.[643] Moreover, the legislator, on the basis of the Penal Code, explicitly uses terminology known to foreign exchange law (e.g. Art. 165a § 1 of the p.c., Art. 299 § 1 and 2 of the p.c.). This means that if the legislator wanted to define money within the framework of Art. 310 § 1 of the p.c. by reference to the currency, this would be expressed in the text of the act. A contrary argument leads to undermining the presumption of rationality of the legislator and undermines the coherence of the system. Moreover, stopping at the indication that the carrier of the legal good is Polish or foreign money is an expression of applying an equal measure to the implementation of the payment and circulation functions. The absence of one of them excludes the qualification of a given monetary token as money on the basis of *ius penale*.

The conducted analysis allows, at the current stage, to formulate the definition of money, which is the object of an executive action of the type pursuant to Art. 310 § 1 of the p.c. Money should be understood as qualified monetary tokens of the Republic of Poland, in the form of banknotes and coins denominated in złoty and grosz, which, being a legal tender in circulation, were issued by a competent constitutional body of the state, i.e. the National Bank of Poland with the assigned compulsory power to redeem monetary liabilities correlated with the universal obligation to

[641] B. Neidhart, *op. cit.*, p. 201; M.A. Niggli, *op. cit.*, Art. 240 N 25.

[642] Resolution of the SC of 15 May 1997, ref. I KZP 9/97, OSNKW 1997, z. 7–8, item 58.

[643] J. Skorupka, *Glosa do postanowienia SN z 7 października 2003 r., V KK 39/03*, „OSP" 2004, z. 6, p. 80 et seq.; K. Buchała, *Glosa do uchwały SN z 15 maja 1997 r., I KZP 9/97*, „OSP" 1997, z. 10, pp. 494–495; Z. Siwik, *Glosa do wyroku SN z 5 lutego 1979 r., I KR 245/78*, „Probl. Praw." 1980, z. 8–9, p. 105 et seq.

accept it. The above approach to money reflects the most important postulates of the representatives of the doctrines of constitutional and civil law, adapting them to the needs of criminal law, oriented towards the protection of the medium of the monetary unit, which functions in trade thanks to monetary tokens. Moreover, defining money in accordance with the above proposal allows, at further stages of consideration, to indicate a group of means that, despite their convergent functions or features, are not money within the meaning of criminal law.

The first, relatively obvious consequence of the application of the above definition is the exclusion, as the object of the executive activity under Art. 310 § 1 of the p.c., of monetary tokens that have been withdrawn from circulation, although they are subject to exchange for legal tender. This conclusion is a logical consequence of taking into account the criterion of the circular nature of money as the carrier of a legal good. However, this does not mean that the counterfeiting of the withdrawn monetary token, which is subject to exchange, is an indifferent act from the point of view of criminal law. The above-mentioned behaviour of the offender should be classified as document counterfeiting within the meaning of Art. 270 § 1 of the p.c. Monetary tokens that are withdrawn from circulation, but subject to exchange, constitute a document, as defined in Art. 115 § 14 of the p.c.

Next, collectable old money (numismatic objects) should be excluded from the scope of money designations as a carrier of legally protected goods. Moreover a fictitious, never-existing coin or banknote is not money either. Such behaviour does not imply a threat of criminal liability according to the above legal qualification. This proposal is shared by Gutekunst,[644] Wysocki,[645] Skorupka[646] and Błaszczyk.[647] At this point, it is only worth recalling that in the comparative legal perspective, the criminalisation of such an act was found (cf. Art. 243 sec. 1 of the Bu.p.c.). The issue of collector banknotes and coins should be made a separate issue. Their status, on the basis of the type of prohibited act in question, raises some doubts. At the outset, the view of Buchała should be highlighted, indicating that "coins minted on various occasions, intended for numismatic purposes, are not money (legal tender) although they have a certain commercial value. Their counterfeiting is not counterfeiting of money, but of a document or a fraud tool specified in art. 205 of the p.c.".[648] In the light of the above view, counterfeiting collector banknotes and coins does not implement the elements of the type in question. It is worth noting, however, that all collector notes, coins and commemorative coins issued by the NBP constitute legal tender in the Republic of Poland.

644 W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 424.

645 D. Wysocki, *Glosa do uchwały SN z dnia 30 września 1998 r., I KZP 3/98*, „OSP" 2000, z. 5, p. 72 et seq.

646 J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1822.

647 M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1030.

648 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 223.

Their purchasing power is determined by the nominal value placed in their content. Regardless of its amount and the sales price set by the NBP, the aforesaid monetary tokens have a collector's value, which is determined by the numismatic market, usually in an amount significantly exceeding the value indicated in their denomination. This leads to the conclusion that the counterfeiting of such marks circulating as a legal tender should be classified as an act under Art. 310 § 1 of the p.c.[649]

Next, it should be verified whether the non-cash variants (bank money and electronic money) included in the broad sense of money should be treated as the designation of the object of the executive activity of this type. It is worth noting the modification of the content scope of Art. 115 § 9 of the p.c., introduced by the 2017 amendment,[650] which boils down to including in the concept of a thing or object also cash recorded in the account. When applying the language and system directives for the interpretation of the legal text, it should be noted that the distinction between the designees of a thing or object, next to money and other means of payment, of a legal tender recorded in an account must lead to the recognition that the scope of these concepts is different and should not be identified with each other. In other words, under criminal law, money and cash deposited in an account constitute separate conceptual categories and other objects determine their material scope. This leads to the conclusion that the so-called bank money – which is a reflection of monetary units in the form of a record on an account – should be considered as cash recorded in the account, which is not money. However, this does not mean that the qualification under Art. 310 § 1 of the p.c. will not apply to counterfeiting of bank money. It is possible, provided that the discussed form of non-cash money is treated as other legal tender.[651]

Subsequently, the subject of our analysis will be electronic money. It is necessary to verify whether such a defined legal tender constitutes money under the penal code. Electronic money is defined in the content of Art. 2 point 21a of the Payment Services Act,[652] according to which it is a monetary value stored electronically, including magnetically, issued, with an obligation to redeem, for the purpose of making payment

[649] M.A. Niggli, *op. cit.*, Art. 240 N 91–97; U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *op. cit.*, § 146 N 2; W. Ruß, *op. cit.*, p. 11; V. Erb, *op. cit.*, p. 779.

[650] The Act of 23 March 2017 amending the Act – the Penal Code and some other acts (Journal of Laws of 2017, item 768).

[651] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 115 § 9 teza 5; M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, pp. 878–879, 1631; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1516; J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1826; idem, *Pojęcie…*, *op. cit.*, p. 55; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, pp. 1039–1040.

[652] The Act of 19 August 2011 on payment services (Journal of Laws of 2011, No. 199, item 1175).

transactions, accepted by entities other than only the issuer of electronic money. This means that this money is devoid of the obligation for it to be accepted in commercial transactions. Moreover, it does not have a universal obligation redemption power that would be guaranteed by the state and is not issued by the NBP, which deprives it of its legal status as a tender. Taking into account the above argumentation, it should be concluded that on the basis of the act prohibited under Art. 310 § 1 of the p.c., electronic money does not belong to the designations of the element of money being the subject of the executive action. It should be classified as a non-monetary tender.[653] Finally, it should be examined whether virtual currency can be considered relevant money under Polish law from the point of view of the act typified in Art. 310 § 1 of the p.c. It is worth noting at this point that it is not the purpose of this work to analyze and assess the phenomenon of virtual currency. This issue requires separate, in-depth analyses.[654] In this thread, we will address only those issues that will allow to determine the indicated research issue. The Polish subject literature generally accepted that virtual currencies cannot be considered either as money in the legal sense nor as electronic money.[655] According to Łukasz Pasternak, bitcoin is neither money, nor any other tender. This means that it remains outside the scope of penalisation of Art. 310 § 1 of the p.c. However, it is worth signaling the postulate *de lege ferenda* formulated by the author, aimed at including bitcoin in the scope of the executive object referred to in Art. 310 § 1 of the p.c.[656] The essence of virtual currencies was to some extent deter-

[653] Synthesis found in: Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 941; J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1823; idem, *Pojęcie…*, *op. cit.*, pp. 53–56.

[654] This challenge has been addressed in an interesting way recently by Behan, see A. Behan, *Waluty wirtualne jako przedmiot przestępstwa*, Kraków 2022.

[655] M. Michna, *Bitcoin jako przedmiot stosunków cywilnoprawnych*, Warszawa 2018, p. 31; J. Konieczny, R. Prabucki, R. Wielki, *Kryptowaluty. Perspektywa kryminologiczna i kryminalistyczna*, Warszawa 2018, p. 74 et seq.; A.I. Piotrowska, *Bitcoin. Płatnicze i inwestycyjne zastosowania kryptowaluty*, Warszawa 2018, pp. 67–69; K. Zacharzewski, *Obrót walutami cyfrowymi w reżimie obrotu instrumentami finansowymi*, „PS" 2017, vol. 11–12, p. 140; idem, *Bitcoin…*, *op. cit.*, p. 1135; J. Dąbrowska, *Charakter prawny bitcoin*, „Człowiek w Cyberprzestrzeni" 2017, vol. 1, pp. 59–60; A.K. Kruszewski, *Polskie regulacje dotyczące walut cyfrowych*, [in:] W. Rogowski (red.), *Regulacje finansowe. Fintech – nowe instrumenty finansowe – resolution*, Warszawa 2017, pp. 64–68; M. Chajda, *Problemy uregulowania kodeksowego zobowiązań pieniężnych*, [in:] P. Stec, M. Załucki (red.), *50 lat kodeksu cywilnego. Perspektywy rekodyfikacji*, Warszawa 2015, p. 292; W. Srokosz, *Prawne aspekty kryptowalut*, [in:] S. Bala, T. Kopyściański, W. Srokosz, *Kryptowaluty jako elektroniczne instrumenty płatnicze bez emitenta. Aspekty informatyczne, ekonomiczne i prawne*, Wrocław 2016, p. 135; T. Dybowski, A. Pyrzyńska, [in:] E. Łętowska (red.), *System…*, *op. cit.*, p. 271; J. Szewczyk, *O cywilnoprawnych aspektach bitcoina*, „MOP" 2018, nr 5, p. 249; R. Morek, [in:] K. Osajda (red.), *Kodeks…*, *op. cit.*, Legalis, art. 358, nt 8; M. Lemkowski, [in:] M. Gutowski (red.), *Kodeks…*, *op. cit.*, Legalis, art. 358, nb 3; J. Czarnecki, *Prawne…*, *op. cit.*, p. 56.

[656] Ł. Pasternak, *Kryptowaluta i pieniądz wirtualny jako przedmiot przestępstwa z art. 310 § 1 k.k.*, „Prok. i Pr." 2017, z. 4, p. 82 et seq.

mined by the legislator, by the legal definition under Art. 2 sec. 2 item 26 of the Act[657] on counteracting money laundering and terrorist financing.[658] Pursuant to the above provision, virtual currency is a digital representation of value that is not a legal tender issued by the NBP, foreign central banks or other public administration bodies (letter a); an international unit of account established by an international organization and accepted by individual countries belonging to or cooperating with this organization (letter b); electronic money within the meaning of the Payment Services Act (letter c); a financial instrument within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments (letter d); a promissory note or cheque (letter e); and it is exchangeable in business for legal tenders and accepted as a means of exchange, and can be electronically stored or transferred or can be subject to electronic trading. The content of the above definition allows us to state *de lege lata* that virtual currencies are neither money nor currency within the meaning of the Foreign Exchange Law.[659] This is due to the indicated lack of basic features of the legal tender, i.e. the general ability to redeem monetary liabilities.[660] Moreover, the implementation of the payment function by the virtual currency is devoid of unlimited character. It can only occur if the parties to the contract agree to it.[661]

Summing up all the threads of the analysis relating to the object of the executive action, it should be pointed out that by money on the basis of the act stipulated in Art. 310 § 1 of the p.c. we should understand qualified monetary tokens of the Republic of Poland, in the form of banknotes and coins denominated in złoty and grosz, which, being a legal tender in circulation, were issued by a competent constitutional body of the state, i.e. the National Bank of Poland with the assigned compulsory power to redeem monetary liabilities correlated with the universal obligation to accept it. Importantly, collector banknotes and coins as well as commemorative coins should also be considered relevant on the basis of the money type. These monetary tokens have all the essential features of money. In addition, such an approach allows to exclude specific objects from the scope of the designations of the object of the executive activity. A monetary token withdrawn from circulation is not money, although it is subject to exchange. This is due to the fact that the legal good, relevant from the point of view of the subject of work, should be of a circulating nature. The implementation of a functional element in relation to such a token constitutes

[657] The Act of 1 March 2018 on counteracting money laundering and terrorist financing (Journal of Laws of 2018, item 723).

[658] W. Kapica, [in:] W. Kapica (red.), *Przeciwdziałanie praniu pieniędzy oraz finansowaniu terroryzmu. Komentarz*, Warszawa 2020, pp. 37–38.

[659] K. Wojdyło, M. Pietkiewicz, *Czym są wirtualne waluty?*, [in:] E. Butkiewicz et al., *Wirtualne waluty*, Warszawa 2014, p. 10.

[660] J. Dąbrowska, *op. cit.*, pp. 59–60.

[661] M. Chajda, *op. cit.*, p. 292.

counterterfeiting of the document under Art. 270 § 1 of the p.c. Old collector and fictitious money cannot be considered money. The so-called bank money and electronic money are not money either. Their counterfeiting constitutes a violation of the norm interpreted under Art. 310 § 1 of the p.c., but treated as another tender. In addition, in the light of the applicable regulations, the recognition of virtual currencies as money under criminal law is excluded.

The last issue requiring reflection is the issue of interpreting the "foreign money" element as the object of an executive action of the type of Art. 310 § 1 of the p.c. Two groups of views can be distinguished in this context. According to the first, foreign money is a monetary token of another state, which has a legal circulation in it.[662] In a similar way, this issue was approached by Świda, who defined foreign money as money of another state, having legal circulation in it in accordance with the relevant regulations.[663] This view was shared by Gutekunst.[664] An alternative concept is based on the assumption that foreign money is a legal tender of foreign countries and the euro. It should be noted that this interpretation is dominant in the subject literature.[665] In this context, the position of Górniok should be considered appropriate, who indicated that "foreign money is the legal tender in circulation in any country, as well as the money of the European Union (EURO)".[666] Referring to the above issue, Daniluk pointed out, in a slightly different light, that foreign money refers to monetary tokens on which a currency system other than the Polish one is based.[667] Against the background of the highlighted view, the position of Siwik, who, on the one hand, refers to the equivalent legal structure of a means of payment of another country and the European Union, on the other hand, to the term "foreign means of payment" functioning in the Foreign Exchange Law (Art. 2 sec. 1 item 9) remains unclear.[668] Pursuant to the above provision, foreign legal tenders are foreign currencies and exchange. On the basis of the quoted provision, we are dealing with an intra-statutory reference to the terms of "foreign currency" and "foreign exchange". Foreign currency are monetary tokens that are a legal tender outside the country, as well as those withdrawn from circulation, but still subject to exchange; exchangeable monetary units used in international settlements is treated

[662] W. Makowski, *Kodeks…*, *op. cit.*, p. 7.

[663] W. Świda, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit.*, p. 725; idem, *Prawo…*, *op. cit.*, p. 619.

[664] W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, pp. 420–421.

[665] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 942; J. Giezek, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 896; J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 3.

[666] O. Górniok, *Przestępstwa…*, *op. cit.*, p. 127

[667] P. Daniluk, *op. cit.*, p. 753.

[668] Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1650.

on an equal basis with foreign currencies, in particular the International Monetary Fund's unit of account (SDR) (Art. 2 sec. 1 item 10). In turn, foreign exchange are securities and other documents acting as a tender, issued in foreign currencies (Art. 2 sec. 1 item 12). In this context, it is worth noting that the scope of the term "foreign tender" is broader than the equivalent of a legal tender of another country. It also includes non-monetary tenders and withdrawn monetary tokens issued in a foreign currency. Taking both concepts into account, the first of the selected approaches should be considered correct and the legal tender of a foreign state and the money of the European Union should be considered as foreign money. The above approach is in line with the presented definition of Polish money, thus, guaranteeing the coherence and cohesion of the system. The presented solution is also characterized by a synthetic approach and a certain degree of symmetry. We will protect such currencies of foreign countries that meet the same standard and achieve analogous objectives and functions as the construction of legal tender in the Republic of Poland. The sole certain indication concerning, *in concreto* the decoding of elements of the objective side may be the list of convertible currencies included in the Notice of the President of the NBP.[669]

2. Polish or foreign monetary token, established as a legal tender but not yet put into circulation

The legal and criminal protection of monetary tokens, established as a legal tender, but not yet introduced into circulation, against counterfeiting, is a consequence of the entry into force of the Act of 9 October 2015 amending the Act – the Penal Code and some other acts.[670] Due to the need to implement the Directive of 2014,[671] the scope of application of the type of offence under Art. 310 § 1 of the p.c. was modified, by expanding the catalogue of objects of the executive action, towards which the attack of the perpetrator may be directed. Thus, the legal and criminal protection provided by the typing provision was extended. The reasons for the need for legislative changes by the legislators of the member states should be considered as follows. The euro, as the currency of the participating member states, was *de facto* from

[669] Notice of the President of the NBP of 30 July 2020 on the publication of the list of convertible currencies (M.P. of 2020, item 680).

[670] M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, p. 1631; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1517; J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1819; T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks…*, *op. cit.*, p. 1422; M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, pp. 1036–1037; J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 1.

[671] Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting, and replacing Council Framework Decision 2000/383/JHA OJL No. 151 of 21.5.2014).

the very beginning a currency of interest to organised criminal groups dealing with counterfeiting. Such a fact, combined with the estimation of losses resulting from the activities of the perpetrators, has increased the interest of the international community in combating this particularly serious crime with a cross-border dimension. In this context, it is worth noting the statement of Błaszczyk, who considered that

> by counterfeiting money tokens established as legal tender, [the perpetrator – M.B.], even before they were put into circulation, gains a time advantage over other counterfeiters, who produce counterfeits of money already in circulation. Certainly, this can also give them an operational advantage, because the rapid introduction of counterfeits – and in this case even their parallel introduction with the original money – will always be a greater challenge for participants in the money trade and law enforcement agencies

constituted the specific rationale for criminalisation of monetary token counterfeiting preceding their emission.[672] Oczkowski, noting the danger that such a counterfeit generates, noted that "the process of counterfeiting was carried out practically in parallel with the process of producing new banknotes".[673] Following the above diagnosis, it was correctly considered that it was necessary to extend the scope of currency protection to the stage preceding its introduction into circulation. In view of the above, it is the will that banknotes and coins that the European Central Bank or national central banks and mints have not yet formally issued should be protected on a par with the existing monetary tokens, underpinned the normative content of Art. 3 sec. 3 of the 2014 Directive.

With reference to the characteristics of the term "monetary token" in the scope of the object of the executive activity, it should be indicated that it should be understood in the manner indicated in Chapter II, item 3, § 3, subsection I of the work. The change in this respect is introduced only by the non-circulating nature of the tokens in question, albeit with an already established date of issue.[674]

The above reasoning should be supplemented with an indication that the attack of the perpetrator may concern both Polish and foreign monetary tokens, which have been established as a legal tender. The discussion of these issues also found expression in Chapter II, item 3, § 3, subsection I of the present work.

[672] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1030.
[673] T. Oczkowski, [in:] V. Konarska-Wrzosek (red.), *Kodeks…*, *op. cit.*, p. 1422.
[674] M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 4.

§ 4. Criminal effect

Referring to the issue of the consequential or ineffective nature of the offences stipulated in Art. 310 § 1 of the p.c., it is necessary to raise the issue of effect as an element of of the objective side. It should be noted that the following analysis does not aspire to be an exhaustive explanation of the phenomenon of effect under criminal law. Such an argument would go beyond the framework and would require a description of the essence of things in terms of criminal law protection of money against counterfeiting. It is worth noting that in recent times attempts have been made to analyse this issue with positive results and from various research perspectives.[675]

It is almost universally accepted in doctrinal considerations to understand the effect as a change in the external world.[676] The view was accepted that in some cases, provided for under sanctioned norms, we are dealing not with a change, but with the immutability of a specific factual situation[677] or an obstacle to a change.[678] The diversity of criteria adopted to characterize the effect does not change the fact that optics of change in the external world has the dominant character in the doctrine of law.[679]

The view on the formal nature of the crime is represented by Błaszczyk,[680] Góral,[681] Skorupka[682] and Ćwiąkalski.[683] The most synthetic arguments are presented by Góral and Ćwiąkalski. The first of the aforementioned claims that the act prohibited under Art. 310 § 1 of the p.c. is accomplished "by the mere fact of executing an object that gives the impression of money".[684] The detail of this thesis can be found in the views of Ćwiąkalski, who justified that the counterfeiting of money is executed the moment of completion of the act itself.[685] The most comprehensive approach is presented by

[675] We are talking about two important publications. The first, by Piórkowska-Flieger, entitled *Skutek czynu zabronionego w polskim prawie karnym*, Lublin 2019. The second, noteworthy monograph was made by Tarapata, see Sz. Tarapata, *Przypisanie sprawstwa skutku w sensie dynamicznym w polskim prawie karnym*, Kraków 2019.

[676] Cf. J. Makarewicz, *Prawo…*, *op. cit.*, p. 76; S. Glaser, *Polskie…*, *op. cit.*, p. 111.

[677] I. Andrejew, *Ustawowe znamiona czynu…*, *op. cit.*, p. 191.

[678] R. Zawłocki, *Przestępstwa przeciwko wierzycielom. Rozdział XXXVI Kodeksu karnego. Artykuły 300–302. Komentarz*, Warszawa 2001, p. 54; H. Pracki, *Nowe rodzaje przestępstw gospodarczych cz. 2*, „Prok. i Pr." 1995, z. 2, p. 28.

[679] M. Królikowski, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część ogólna…*, *op. cit.*, p. 94.

[680] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1049.

[681] R. Góral, *Kodeks…*, *op. cit.*, p. 517.

[682] J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1822; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1606; idem, *Przestępstwa…*, *op. cit.*, p. 117.

[683] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 940.

[684] R. Góral, *Kodeks…*, *op. cit.*, p. 517.

[685] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks…*, *op. cit.*, p. 940.

Skorupka, who, expressing his view on the formal nature of the type, indicated that "descriptions of the causative actions as »counterfeits«, »alters«, »removes« means that the perpetrator is currently performing them, already, now – *preasens*, and not *perfectum*. It must therefore be assumed that we are dealing with a formal act".[686] The argument which applies to all of them takes the form of the thesis that the prohibited act in question is committed when at least one counterfeit has been produced in a form which makes it possible to present it as authentic.[687] It is worth mentioning at this point that the acceptance of the above assumption does not exclude the material nature of the type in question. The advocates of the material approach to money counterfeiting include Tagancew,[688] Makowski,[689] Śliwowski,[690] Świda,[691] Buchała,[692] Siwik,[693] Gałązka[694] and Kulik.[695] The position of Kulik also deserves to be highlighted. This is justified by the fact that the author originally favoured the formal character of the type. Revising his earlier view, he then adopted a material approach of the type, namely: "It seems, however, that we can speak here of the effect which is the appearance of the object of the executive action in an altered form".[696] Taking into account the outline of the concept of recognizing the effect functioning in the literature, as well as the views expressed so far on the nature of the type under Art. 310 § 1 of the p.c., it is necessary to respond to the indicated issue. On the basis of the first variety of prohibited conduct, the legislator used the verb "to counterfeit". It expresses causality in a similar way as the terms "to produce", "to fabricate", or "to create", which mean the creation of something. Hence, the conclusion that they should be considered as deriving from a similar semantic core seems to be justified.[697] It seems that there are no obstacles or qualitative differences between the aforementioned terms expressing causality. Moreover, each of them reflects the effectual nature of the perpetrator's behaviour. This means that the prohibited act of counterfeiting money is a material type. To the element of the act typified in Art. 310 § 1 of the p.c., on the basis of counterfeiting, there should be a change in the external world, boiling down to the creation of an object that is an

686 J. Skorupka, *Przestępstwa…*, *op. cit.*, p. 117.

687 Judgment of the SC of 5 January 1982, ref. IV KR 283/81, Legalis.

688 N. Tagancew, *op. cit.*, p. 454.

689 W. Makowski, *Kodeks…*, *op. cit.*, pp. 9–10.

690 J. Śliwowski, *op. cit.*, p. 488.

691 W. Świda, [in:] I. Andrejew, W. Świda, W. Wolter (red.), *Kodeks…*, *op. cit.*, p. 725; idem, *Prawo…*, *op. cit.*, p. 620.

692 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 225.

693 Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1653.

694 M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, p. 1634.

695 M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 18.

696 *Ibidem*.

697 J. Piórkowska-Flieger, *Skutek…*, *op. cit.*, pp. 216–217; cf. R. Sarkowicz, *Wyrażanie przyczynowości w tekście prawnym (na przykładzie kodeksu karnego z 1969 r.)*, Kraków 1989, p. 89.

imitation of a circular value. The counterfeit money created as a result of the criminal action breaks away from the perpetrator themselves and constitutes a separate entity. Moreover, such an imitation can function independently in trade, regardless of the will of the counterfeiter. This leads to the conclusion that the type under Art. 310 § 1 of the p.c., within the scope of counterfeiting, the object of executive action is of an effectual nature.

In a similar way, the issue of effect is presented on the basis of other varieties of prohibited behaviour. The verb "to alter" has a similar character as the term "to change" or "to process". Piórkowska-Flieger rightly points out that "since the essence of the effect is change, the use of the term »to alter« in the description of the behaviour means that it has an effective nature".[698] By sharing the above finding and accepting the close meaning relationship of the term "to alter" with the change, it should imply certain consequences from the point of view of interpretation of the element of the type in question. There are no arguments that would exclude effectiveness in both cases. As a consequence, it should be assumed that the prohibited act consisting in the altering of money is a material type. A change in the external world consisting in the emergence of a carrier of a legal good with modified, relative to the original state characteristics, is the hallmark of the act typified in Art. 310 § 1 of the p.c. It allows us to formulate the thesis that the crime in question in the scope of altering the object of the executive action is of an effective nature.

The same arguments are in favour of the material nature of the offence when the variation of the prohibited conduct is the removal of the sign of redemption. The commission of a prohibited act will be dealt with when this element is fully removed from the money. In connection with the above, the creation of a modified carrier of a legal good, devoid of the sign of redemption appearing in its content, is the result of an act typified in Art. 310 § 1 of the p.c. This leads to the conclusion that the crime of counterfeiting money consisting in removing the sign of redemption from it is an effective type.

4. The subject of crimes under Art. 310 § 1 of the p.c.

If the implementation of crimes under Art. 310 § 1 of the p.c. is effected through action, they are of a universal nature. Their perpetrator can be any subject capable of incurring criminal liability.[699] In this context, the nationality of the

[698] J. Piórkowska-Flieger, *Skutek…*, *op. cit.*, pp. 216–217.

[699] Synthesis found in: M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 29; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 1514; M. Gałązka, [in:] A. Grześkowiak,

perpetrator[700] or place of their residence[701] do not introduce a variable in this respect. Moreover, the normative scope of the subject of the analyzed prohibited acts is not affected by the possession of above-average competences or qualifications[702] and whether the perpetrator was subject to a specific obligation within the meaning of Art. 2 of the p.c.[703]

Due to the fact that the above crimes have an effectual nature, if they are committed by omission, from the point of view of the subject, their individual nature should be assumed. The perpetrator can only be the guarantor, i.e. the person burdened – within the meaning of Art. 2 of the p.c. – with a legal, specific obligation to prevent the effect. In this context, Buchała is right, stating that

> it cannot be a limine excluded that the counterfeiting or altering of money in the form of a coin or a banknote will involve a specific legal obligation to prevent the counterfeiting of money or a security or to mark it as redeemed in order to withdraw it from circulation. Such a person who is in the situation of the guarantor of preventing the act referred to in art. 227 § 1 (2 or 3) of the p.c. shall be liable for failure to fulfil the obligation incumbent on them.[704]

In such a situation, the types under Art. 310 § 1 of the p.c. are proper individual offences. In the case of criminal complicity in the offences typified in Art. 310 § 1 of the p.c., committed by omission, the fact that the perpetrator was subject to a legal obligation, a special obligation to prevent the effect is important for holding the *extraneus* criminally liabile.[705] The issue of the cooperation of the *extraneus* with the *intraneus*, in the individual, proper crime, is presented in an interesting way, when the first participates in the commission of an act by action, and the second – by omission. Such a possibility is permissible on the basis of Art. 21 § 2 of the p.c.[706]

K. Wiak (red.), *Kodeks…*, *op. cit.*, p. 1630; Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna. Tom III*, *op. cit.*, p. 931.

700 L. Peiper, *Komentarz…*, *op. cit.*, p. 375; W. Makowski, *Kodeks…*, *op. cit.*, p. 7.

701 L. Peiper, *Komentarz…*, *op. cit.*, p. 375.

702 J. Skorupka, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, pp. 822–823; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1666; K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel (red.), *Komentarz…*, *op. cit.*, p. 220.

703 J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1830; idem, [in:] R. Zawłocki (red.), *System…*, *op. cit.*, pp. 822–823; idem, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1666; idem, *Przestępstwa…*, *op. cit.*, p. 115.

704 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel (red.), *Komentarz…*, *op. cit.*, p. 220.

705 *Ibidem*.

706 Cf. Interesting remarks are provided by Wąsek, who, in particular situations of omission by the guarantor in cooperation with the *extraneus*, considered the possibility of qualifying as

It should also be indicated that the acts typified in Art. 310 § 1 of the p.c. were not included in the enumerative listing pursuant to Art. 10 § 2 of the p.c. When talking about the responsibility of a minor for the implementation of behaviour, the elements of which correspond to the characteristics included in the content of Art. 310 § 1 of the p.c., it is worth paying attention to Art. 1 sec. 1 item 2 of the Act on Support and rehabilitation of minors (hereinafter referred to as MinA.).[707] The provisions of this normative act apply in the field of proceedings for criminal offences – to persons who committed them after the age of 13 but before reaching the age of 17. Within the meaning of the said Act, a criminal act is understood as, *inter alia*, an act prohibited by Act[708] classified as a crime or a fiscal offense (Art. 1 sec. 2 item 2 letter a of the MinA.). Therefore, there are no obstacles to accepting that a minor, who has completed the elements of the types specified in Art. 310 § 1 of the p.c., may be held liable for the commission of a criminal act. In addition, it should be mentioned that the acts typified in Art. 310 § 1 of the p.c. are included in Art. 16 sec. 1 item 2 letter a of the Act on the Liability of Collective Entities for Prohibited Acts under Penalty (hereinafter referred to as the ColLiabA.).[709]

5. Subjective side

The offence of counterfeiting, alteration or removal of the sign of redemption from money or its surrogate can only be committed intentionally. This leads to the conclusion that the acts typified in Art. 310 § 1 of the p.c. cannot be committed unintentionally. The above conclusion results from the application of the interpretative rule under Art. 8 of the p.c., *in concreto* with the fact that the type in question constitutes a crime. First of all, it should be noted that counterfeiting, alteration or removal of the sign of redemption from money or its surrogate can be commited with direct intent. This conclusion dominates the subject[710] and is not contested in court deci-

an accomplice to a crime committed by omission or as a mental support. The author ultimately opted for the construction of complicity, see A. Wąsek, *Współsprawstwo w polskim prawie karnym*, Warszawa 1977, pp. 141–143.

[707] The Act of 9 June 2022 on the support and rehabilitation of minors (Journal of Laws of 2022, item 1700).

[708] Pursuant to Art. 1 sec. 2 item 3 of the MinA., a prohibited act is a behaviour with the characteristics specified in the criminal law.

[709] The Act of 28 October 2002 on the Liability of collective entities for prohibited acts under penalty (Journal of Laws of 2002, No. 197, item 1661, as amended).

[710] Synthesis found in: M. Kulik, [in:] M. Mozgawa (red.), *Kodeks…*, *op. cit.*, LEX/el art. 310 teza 30; Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna. Tom III*, p. 951; M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, pp. 1634–1635; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, pp. 1520–1521.

sions.[711] Pursuant to the contents of Art. 9 § 1 of the p.c. *in principio*, the prohibited act is committed intentionally, when the perpetrator intends to commit it. In this case, the perpetrator is aware that the execution of the object of the intention constitutes the implementation of a prohibited act and wants to achieve such a result.[712] This means that the subject of the offence intends the implementation of a set of characteristics of the types of offences under Art. 310 § 1 of the p.c. In relation to counterfeiting, the perpetrator intends to give a specific object the appearance of authentic money, a monetary token, other tender or a security that is traded. In the light of the above, it is worth noting the judgment of the Court of Appeal in Gdańsk, where it was stated that "the perpetrator intends to create a real counterfeit money, intended as its substitute in financial transactions, and not only a prop, intended for other applications and tasks invented by the perpetrator. Counterfeiting will be to make such an imitation that it can be passed on as an original".[713] On the other hand, the perpetrator who alters money or its surrogate should be aware that by their behaviour they introduce modifications in the object of their executive action, which is an authentic value. Therefore, it is sufficient for the offender to have a general understanding that the prohibited conduct concerns the original money or its surrogate or is aimed at obtaining a tender functioning in circulation. When verifying a direct intention, the perpetrator is not required to have detailed knowledge of the object of the executive action, in particular the types of securities or other tenders. In order to incur criminal liability, it is sufficient to establish that the subject of the crime realized that their conduct violated the rule of conduct with the legal good, which he was obliged to comply with.

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[711] Judgment of the SC of 11 January 1980, ref. III KR 400/79, LEX nr 64067; decision of the SC of 27 February 2014, ref. V KK 8/14, LEX No. 1441289; judgment of the CA in Gdańsk of 10 July 2019, ref. II AKa 165/19, LEX No. 2749031; judgment of the CA in Warsaw of 19 February 2016 ref. II AKa 18/16, LEX No. 2157755; judgment of the CA in Szczecin of 7 November 2013, ref. II AKa 179/13 Lex No. 1400469; judgment of the CA in Szczecin of 29 January 2009, ref. II AKa 156/08, OSA 2010 vol. 12, items 21–33.

[712] J. Giezek, *Świadomość sprawcy czynu zabronionego*, Warszawa 2013, pp. 72–101; W. Mącior, *Zasady odpowiedzialności karnej w projekcie kodeksu karnego z 1995 r.*, „PiP" 1996, z. 6, p. 70; M. Rodzynkiewicz, *Określenie umyślności i nieumyślności w projekcie kodeksu karnego*, „PS" 1995, vol. 5, p. 97 et seq.; J. Lachowski, [in:] R. Dębski (red.), *System Prawa Karnego, t. 3: Nauka o przestępstwie. Zasady odpowiedzialności*, Warszawa 2013, p. 535, M. Budyn-Kulik, *Umyślność w prawie karnym i psychologii*, Warszawa 2015, pp. 35–36. Wolter described it as "wanting intent" to differentiate it from *dolus eventualis*; cf. W. Wolter, *Refleksje nad metodą rozwiązywania problemów w prawie karnym*, „Studia Filozoficzne" 1985, vol. 2–3, p. 208; idem, *Uwagi o podmiotowej stronie czynu przestępnego w ujęciu projektu kodeksu karnego PRL*, „PiP" 1956, z. 9, p. 298.

[713] Judgment of the CA in Gdańsk of 10 July 2019, ref. II AKa 165/19, LEX nr 2749031; it seems that this view is also shared by Giezek, see, J. Giezek, [in:] J. Giezek (red.), *Kodeks…*, *op. cit.*, p. 899.

It is not possible to exclude the implementation of the constituent elements of crimes under Art. 310 § 1 of the p.c. as part of the *dolus directus* variety, i.e. quasi-conditional intent.[714] Despite the fact that many objections to this form of intention have been formulated in the subject literature, it is worth devoting a few reflections to this issue.[715] First of all, it should be noted that the quasi-conditional intent occurs when the perpetrator of an act committed under the *dolus directus* agrees – although they do not want to – the occurrence of an element conditioning the criminality of an act. In clarifying this issue, according to the views of Andrejew, we deal with quasi-conditional intent, when the uncertainty of the perpetrator concerns the type of element other than the causative act. This leads to a finding of the existence of that intention when the perpetrator is not fully aware of the set of elements constituting the essence of the offence.[716]

Reflecting on the *dolus directus coloratus* as regards the types grouped in Art. 310 § 1 of the p.c., it is also necessary to refer to the issue of fundamental reservations. It is said that in the opinion of some authors, the intent to release an imitation into circulation is to constitute an alleged element of type. Andrejew[717] was the first to express such an opinion. He derived his conviction from the results of the application of the language directives of the interpretation of the legal text relating to the character of the executive action. In the opinion of Andrejew, there is no doubt that the prohibited behaviours indicated in the content of Art. 310 § 1 of the p.c. indicate the intention to use the unlawfully obtained or altered object of the executive action.[718] On the other hand, Buchała also presented his view in this context.[719] The researcher seems to justify his position by characterizing the type as directed against the trading of money and securities. In this – according to Buchała – one should look for the argument for adopting the directional nature of the type. Responding to both views, they must be considered wrong, and consequently rejected. The conclusion resulting from the find-

[714] I. Andrejew, *Polskie…*, *op. cit.*, p. 142; idem, *Ustawowe…*, *op. cit.*, pp. 207–208; idem, *Kodeks…*, *op. cit.*, p. 17, 204; W. Wolter, *Nauka…*, *op. cit.*, pp. 132–135. The evolution of Andrejew's views related to the view of quasi-conditional intent is presented by Pohl, see Ł. Pohl, *O umiejscowieniu zamiaru niby-ewentualnego w kodeksowych konstrukcjach umyślności*, [in:] J. Ciapała, A. Rost (red.), *Wokół konstytucji i zdrowego rozsądku: prace dedykowane Profesorowi Tadeuszowi Smolińskiemu. Circum constitutionem rationemque sanam*, Szczecin 2011, pp. 351–358.

[715] J. Giezek, [in:] J. Giezek (red.), *Kodeks karny. Część ogólna…*, *op. cit.*, p. 61; idem, *Świadomość…*, *op. cit.*, p. 182; M. Królikowski, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część ogólna…*, *op. cit.*, p. 398; A. Marek, *Kodeks…*, *op. cit.*, p. 41; M. Budyn-Kulik, *Umyślność…*, *op. cit.*, p. 58; Ł. Pohl, *Prawo karne. Wykład części ogólnej*, Warszawa 2013, p. 149; W. Wolter, *Nauka…*, *op. cit*, pp. 130–133.

[716] I. Andrejew, *Ustawowe…*, *op. cit.*, pp. 205–207.

[717] Idem, *Kodeks…*, *op. cit.*, pp. 204–205.

[718] *Ibidem*, p. 205.

[719] K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 226.

ings of Andrejew and Buchała breaks away from the principle of the specificity of the offence and constitutes an attempt to interpret an element of the type of prohibited act that does not result from the text of the Act. In this place of the work we should answer whether the aggravated types under Art. 310 § 1 of the p.c. should be considered as crimes characterised by the purpose or special motivation of the perpetrator (directional crime). The answer to this question seems obvious. The title offences are not acts for which it is necessary to prove *dolus directus coloratus*. Such a position is presented almost uniformly in the subject literature[720] and it also dominates the case law.[721] The legislature does not require the perpetrator to counterfeit, alter or remove a sign of redemption from the object of direct action in order to put a counterfeit or a surrogate into circulation.[722] What is significant in this context is that, unlike in the act typified in Art. 270 § 1 of the p.c., on the basis of the title crimes, the use of a formula indicating the purpose of the act of the perpetrator was omitted. Skorupka is right, pointing out that "the question of the benefit that the perpetrator wants to achieve, or the intent to use money, another tender or a security as authentic are both irrelevant".[723] Behaviour covered by Art. 310 § 1 of the p.c. is sanctioned regardless of the objective of the perpetrator. This means that the subject of the offence will be liable even if they have committed a criminal offence in order to test their skills, for fun or even without a specific reason.[724] The fact that the discussed general-abstract type is devoid of directional character does not mean, of course, that *in concreto* the perpetrator will not be accompanied by the aforementioned form of intent. In this context, it is worth noting the statement of Buchała, who pointed out that

[720] Synthesis found in: Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *Kodeks karny. Część szczególna. Tom III…*, *op. cit.*, p. 951; M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit.*, pp. 1634–1635; J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1830; B. Gadecki, Kodeks…, *op. cit.*, Legalis, art. 310 Nb 1; J. Wojciechowski, *Kodeks…*, *op. cit.*, p. 548; A. Krukowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (red.), *System…*, *op. cit.*, p. 523.

[721] Instead of many: Judgment of the Supreme Court of 11 January 1980, ref. III KR 400/79, LEX No. 64067; judgment of the SC of 24 April 1976, ref. II KR 56/76, OSNPG 1976, vol. 11-12, item 102; decision of the SC of 27 February 2014, ref. V KK 8/14, LEX No. 1441289; judgment of CA in Warsaw of 12 October 2016, ref. II AKa 149/16, LEX nr 2171257.

[722] On the basis of German legislation this looks differently, see U. Stein, [in:] H.-J. Rudolphi, E. Horn, E. Samson (Hrsg.), *Systematischer…*, *op. cit.*, § 146 N 8; I. Puppe, [in:] U. Kindhäuser, U. Neumann, H.-U. Paeffgen (Hrsg.), *Strafgesetzbuch…*, *op. cit.*, § 146 N 12; W. Ruß, *op. cit.*, pp. 15–17. For reflections on type directionality in Switzerland, see C.L. Meili, S. Keller, [in:] M.A. Niggli, H. Wiprächtiger (Hrsg.), *op. cit.*, p. 1727; S.B. Kim, *op. cit.*, pp. 74–75.

[723] J. Skorupka, [in:] R.A. Stefański (red.), *Kodeks…*, *op. cit.*, p. 1830. Similar considerations can be found in the case-law, see the decision of the SC of 27 February 2014, ref. V KK 8/14, LEX No. 1441289; judgment of the CA in Szczecin of 7 November 2013, ref. II AKa 179/13, LEX No. 1400469.

[724] W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit.*, p. 337.

> the attack on the money system and the trading of securities can also be motivated by political goals (as evidenced by the period of the last war). It may be about causing chaos in the economy in order to collapse it, and thus achieve political goals. This example may explain the omission, among the elements of the type defined in § 1 art. 277 of the p.c., of the element "in order to achieve a financial benefit", which is still in typical situations an obvious motive for committing the crimes provided for in art. 227 of the p.c.[725]

The above observation should in principle be agreed with. However, this does not change the characteristics of the type from the point of view of the element of the subjective side. Summing up the analyzes so far, it is agreed that the purpose for which the imitation of money or its surrogate was created is irrelevant to the essence of the prohibited acts typified in Art. 310 § 1 of the p.c.

Some allow the possibility of committing the crimes characterized in Art. 310 § 1 of the p.c. also with conditional intent. This position was expressed by Gutekunst[726] and Buchała.[727] The former allows the realisation of counterfeiting of money or its surrogate within the framework of the *dolus eventualis* without further justification. On the other hand, Buchała seems to accept the commission of the offences in question *cum dolo eventualis*, but only in the event of a special circumstance of a material nature.[728] *A contrario* – in the opinion of Buchała – committing the act under the conditions of a conditional intent is limited by the number of created fakes. Only in the case of a single imitation can the perpetrator cover the set of elements of type (intellectual element) in their consciousness and accept that the result of their behavior is the creation or altering of money or its surrogate. If the perpetrator's intent includes more than one copy, the said author excludes the performance of the act under the conditions of the conditional intent. In turn, the position of Piórkowska-Flieger is not entirely clear, who in the above context indicates that "the subject party to the offences described in art. 310 of the p.c. consists in intentionality, usually in the form of a direct intent".[729] On the basis of the above reflection, it can be suspected that the indicated author does not exclude the deliberate implementation of the elements of the discussed type as part of the conditional intent. However, in her opinion, these situations will not be very frequent. The other authors state that a prohibited act consisting in counterfeiting, altering or removing the sign of redemption from money or its surrogate can only be committed with direct intent.[730]

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725 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 226.

726 W. Gutekunst, [in:] O. Chybiński, W. Gutekunst, W. Świda (red.), *Prawo…*, *op. cit*., p. 421.

727 K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit*., p. 226.

728 *Ibidem*.

729 J. Piórkowska-Flieger, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit*., LEX/el art. 310 teza 5.

730 For a synthesis: M. Gałązka, [in:] A. Grześkowiak, K. Wiak (red.), *Kodeks…*, *op. cit*., pp. 1634–1635; G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit*., pp. 1520–1521; A. Marek,

All analyses carried out in this context, with more or less intensity and awareness, are based on the same argument referring to the "specificity of the type".

First of all, it should be noted that a direct reference to the mentioned factor can be found in the interpretation by Błaszczyk. The aforementioned author, justifying – on the basis of types from Art. 310 § 1 of the p.c. – the narrowing of the intentional behaviour of the perpetrator to the direct intent indicated that "the offense under art. 310 § 1 of the p.c. can only be committed with direct intent, because due to the specificity of the behaviour prohibited by this provision, it is impossible to admit a case of conditional intent".[731] However, it is vain to look for clues as to what this "specificity" would consist in.

Next, it is worth paying attention to the interpretation by Makowski, who, explained the narrowing the subjective side of counterfeiting money or its surrogate solely to the direct intent, with the characteristics of prohibited causal behaviour. He pointed out that "the criminal act must be intentional. This is due to both formal considerations (art. 48), as from the actual state of the crime itself".[732] A similar view was also presented by Jerzy Śliwowski, who indicated that

> admittedly, one can imagine a situation where the perpetrator of counterfeiting of money and bearer documents does not act for material gain (but, for example, to discredit the authority of the state in this way), but this does not mean that such falsification can be done with a conditional intent. It seems impossible. The counterfeiter always acts *cum-dolo colorato*, with the specific intent of creating apparent values or of altering authentic values or of attracting signs of redemption.[733]

In more recent analyses, the reference to the restrictive impact of the causative action on the subjective side can be seen in the works of Górniok and Łabuda. The first of the above, indicating the reasons of a linguistic nature, argues that "although the legislator does not specify the purpose to which the perpetrator is aiming when taking the above-mentioned actions, their content (counterfeits, alters, removes) assumes the »desire« to induce changes in the objects of the act and excludes only »accepting« their consequences".[734] In turn, Łabuda directly points out that "such a conclusion is justified in the sense of these elements, it is difficult to imagine, for example, counterfeiting money with a possible intention. If anyone initiates these

Kodeks…, *op. cit.*, p. 573; R. Góral, *Kodeks…*, *op. cit.*, p. 518; O. Górniok, *Przestępstwa…*, *op. cit.*, p. 131.

731 M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks kary. Część szczególna, Tom II…*, *op. cit.*, p. 1049.

732 W. Makowski, *Kodeks…*, *op. cit.*, p. 9.

733 J. Śliwowski, *op. cit.*, p. 488.

734 O. Górniok, *Przestępstwa…*, *op. cit.*, p. 131.

things, they must want them".[735] It seems that for all the mentioned semantic connotations of meaning of the action, it excludes the occurrence of a voluntary element characteristic of the normative structure of the conditional intent. This means that the key argument seems to be the elements resulting from the application of the language directive to the analysis of element of the type of offence.

When presenting our own position, it should be pointed out that counterfeiting, alteration or removal of the sign of redemption from money or a monetary token may be committed intentionally, only under conditions of direct intent. There is no doubt that the perpetrator, when committing the executive elements, must undertake a certain amount of work related to the counterfeiting of money or its surrogate. What is clear, this effort can be smaller or larger, thus, determining the level and quality of imitation. However, this does not change the fact that the counterfeiter's behavior is aimed at creating a counterfeit or altering an original value and they must want it. In turn, the conditional intent is characterized by a lack of certainty as to the possibility of implementing a set of elements of type, while, as part of the voluntary element, there is acceptance of the possibility of a prohibited act.[736] The joint analysis of the aforementioned elements of the intentional subjective party excludes the commission of the act typified in Art. 310 § 1 of the p.c. within the framework of *dolus eventualis*.

6. Summary

Summarizing the characteristics of the type under Art. 310 § 1 of the p.c., it is agreed that the discussed act constitutes an attack on the normative foundations of the country's financial system in the form of its security, stability and trust in money. The indicated legal goods are the main subject of protection. The analysis made it possible to assume that the type in question is also characterized by a secondary subject of its protection. It is the security, stability and trust in payment transactions using money. Moreover, it has been demonstrated that it is conceivable in the reality of a specific case that the counterfeiting of individual interests in property or property of participants in the financial system are violated. The type under Art. 310 § 1 of the p.c., despite the protection of general values, does not exclude the protection of particular interests.

From the point of view of the elements of the objective side, it is worth recalling that counterfeiting should be understood as the creation of an object resembling money or a monetary token in such a way that it can be considered an original. The altering of the medium of the legal good is the modification of the original money,

[735] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit*., pp. 1520–1521.

[736] Judgment of the CA in Lublin of 11 July 2002, ref. II AKa 143/02, OSA 2003, vol. 4, item 29.

which creates the appearance of authenticity. Removing the sign of redemption means any actual or legal act that leads to the restoration of the economic significance of money before its cancellation. Each of the behaviours involved in the executive action can be committed both by action and by omission. In a general-abstract sense, each of the varieties of forbidden behaviour is characterized by an identical degree of social harm. What is more, the method of performing the offense or the means used are irrelevant for the attribution of liability for it. On the other hand, the level of mapping of the original money is relevant. The analysis made it possible to distinguish two stages of criminal law valuation. The first of a reductive (eliminative) nature and the second – verification (evaluative).

During the first stage, it is necessary to determine whether the created imitation includes the generic features of money, which in the opinion of an external observer, distinguish it from other things occurring in legal transactions. The lack of these elements excludes liability on the basis of Art. 310 § 1 of the p.c., their occurrence allows to continue the analysis. The degree of convergence of the imitation with the original requires further analysis. If the mapping is so flawed that it could not, under any circumstances, even unfavourable ones, mislead anyone as to the authenticity of the imitation, it may be said that there may be an imputation to the perpetrator of the criminal attempt of an unsuccessful counterfeiting of money (Art. 13 § 2 of the p.c.). On the other hand, when the counterfeit raises *prima facie* doubts in every person, it means that the perpetrator has not committed the prohibited act, but their behaviour should be assessed as a skilful attempt. However, the absence of justified reservations as to authenticity does not imply the implementation of the complete set of elements of the type. It allows us to move to the second stage of valuation.

On the basis of the second stage, the degree of similarity of the counterfeit to the original money token is assessed, using the developed models. The main part of them is based on a personified comparative form, taking the form of a user of money dressed in a specific set of features (experienced, average, inexperienced). The most representative in the literature on the subject and judicial jurisprudence is the use of the model of the subject of an inexperienced subject and it boils down to the assumption that the performance takes place when the counterfeit reflects such a degree of similarity, so as to mislead as to its authenticity an established personal pattern.

To the extent relevant for the present work, the counterfeiting typified in Art. 310 § 1 of the p.c. refers to Polish or foreign money and a monetary token established as a legal tender, but not put into circulation. Under the system of Polish law, money is an ambiguous term, interpreted divergently in various branches of law. It was, therefore, necessary to verify whether, within the framework of criminal law, this element can be interpreted in the same scope as under civil law, or whether this term requires an autonomous assessment justified by the need to achieve the objectives and functions of the *ius penale*. Our analysis proved a specific understanding of money, which boils

down to a monetary token, that must be characterized by a specific set of features. Firstly, only a monetary token that has a public law character, i.e. was issued by a competent constitutional body of the state within the meaning of Art. 227 sec. 1 of the basic law. This means that under criminal law, the so-called private money cannot be considered money. From the point of view of the legal norm interpreted under Art. 310 § 1 of the p.c., a monetary token issued by the National Bank of Poland – a legal tender – should be of a circular nature. Only in this case can we really talk about creating an abstract threat to the object of protection. This leads to the conclusion that a money token withdrawn from circulation, but subject to exchange or a numismat, cannot be considered money (Art. 2 sec. 1 point 7 of the FExA.). Interestingly, collector banknotes also meet the designator of money. They are a legal tender. Both types of cashless money are not money either. Whereas, until the entry into force of the amendment to the Penal code, amending the wording of Art. 115 § 9 of the p.c., the so-called "bank money" could be interpreted as money within the meaning of Art. 310 § 1 of the p.c., after the entry into force of the above change, it is now cash registered in an account, which is not money. On the other hand, electronic money – as a monetary unit occurring in isolation from a monetary token – is generally recognized on the basis of this type as other tender. Consequently, it fails to designate money.

Next, it was pointed out that the counterfeiting of money in all its variations is a material (consequential) crime. The change in the external world, detached from the behaviour of the perpetrator, is the creation of an object that constitutes an imitation of circulating money. This conclusion was preceded by an analysis of verbal elements that express causality.

There are no major interpretative doubts about the issue of the subjective side of the money counterfeiting. The type of offence in question is characterised by a deliberate subjective aspect in the form of *dolus directus*. The subjective element of the type has not been narrowed down to such behaviours that were undertaken in order to put the counterfeit into circulation.

The subject of our in-depth analysis of views among representatives of the doctrine of criminal law is not the element of the subject of the offense under Art. 310 § 1 of the p.c. Usually, this analysis is reduced to a statement regarding the general nature of the type. The argument contained in the work proved that there are situations when counterfeiting of money will constitute an individual crime.

CHAPTER III

Measures of Criminal Law Response to Offences under Art. 310 § 1 of the Polish Penal Code

1. Introductory remarks

This chapter will discuss criminal sanctions that are provided for or can be imposed on the perpetrators of the analysed crimes. The analysis will also include selected directives on the judicial dimension of the sentence and circumstances implying its dimension beyond the limits of the statutory threat. However, the role of this part of the work is not a detailed analysis of the content, objectives or functions of punishment. A different assumption would go beyond the framework and requirements of the present study. Wherever it has a practical dimension, the circumstances taken into account at the judicial stage of the sentence will also be presented.

2. Penalties and directives of their dimension

The starting point for further consideration is the definition of a criminal penalty. This issue posed a challenge for representatives of the criminal law doctrine for decades. Marian Cieślak correctly diagnosed this issues, stating that "no one who deals with criminal law (…) is able to protect themselves from the question: what is the meaning of this strange game, which consists in making a person discomfortable, and thus in causing suffering? What is the essence of punishment? And what are its objectives and tasks under a specific legal system".[737] In connection with the above, it is necessary, albeit cursory, to explore the phenomenon of the system of sanctions and other measures of legal and criminal response.

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[737] M. Cieślak, *O węzłowych pojęciach związanych z sensem kary*, „NP" 1969, vol. 2, p. 196.

Doctrinal considerations indicate that criminal sanction is the consequence of the commission of an offence provided for by the legal system, which in its scope contains a measurable discomfort and is a manifestation of disapproval for the committed act and its perpetrator.[738] This makes it possible to make a further distinction between the penalty *sensu largo* and the penalty *sensu stricto*. In the first case, it refers to any means of criminal reaction that can be applied to the perpetrator of a criminal act. A narrow understanding of sanctions presupposes an interpretation referring to one or more of the measures provided for in Art. 32 of the p.c.[739] All types of penalties should be described in the provisions of statutory rank. This is an eloquent manifestation of the guarantee function of criminal law, resulting from the *nulla poena sine lege* principle. It is obvious that the greatest degree of the aforementioned discomfort is associated with the use of imprisonment. Taking into account the gradation of sanctions adopted by the legislator, from the point of view of the abstract intensity of interference with the rights and freedoms of the object of the crime, it should be noted that only a sanction of an isolating nature was used. The prohibited acts typified in Art. 310 § 1 of the p.c. were threatened with imprisonment of 5 to 25 years.

The nature of the term of imprisonment has been regulated in Art. 32 items 3 and 4 of the p.c. In relation to the type of prohibited act subject to our analysis, it is possible to decode the limits of the statutory threat of punishment with additional consideration of Art. 37 of the p.c. According to the content of the said provision, the term of imprisonment provided for against the perpetrator of the act defined in Art. 310 § 1 of the p.c. may amount to not less than 5 and shall not exceed 30 years. This means that the legislator uses a relatively determined penalty. In turn, from the point of view of the statutory threat structure, the analyzed type operates a complex sanction. It is justified by the fact that, as of October 1, 2023, the Polish Criminal Code no longer operates the punishment of 25 years' imprisonment as a separate type of sanction.

As part of the statutory threat of the discussed group of offences under Art. 310 § 1 of the p.c., no penalty was provided in the form of a fine.[740] Pursuant to the contents of Art. 33 § 1 of the p.c., a fine is adjudged in daily rates, specifying the number of rates and the amount of one rate. Unless otherwise provided for in a specific pro-

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738 L. Lernell, *Refleksje o istocie kary*, „PiP" 1969, vol. 1, p. 54; S. Glaser, *Polskie…*, *op. cit.*, p. 256.

739 W. Wolter, *Zasady wymiaru kary w kodeksie karnym z 1969 r.*, „PiP" 1969, z. 10, p. 521; J. Raglewski, *Model nadzwyczajnego złagodzenia kary w polskim systemie prawa karnego (analiza dogmatyczna w ujęciu materialnoprawnym)*, Kraków 2008, p. 22.

740 W. Dadak, *Grzywna samoistna w stawkach dziennych. Aspekty prawne i kryminologiczne*, Warszawa 2011, pp. 63–77; J. Majewski, *O niektórych wątpliwościach związanych z wykładnią przepisów dotyczących orzekania grzywny w nowym kodeksie karnym*, „Pal." 1998, vol. 3–4, pp. 6–7; W. Wróbel, *Grzywna w nowym kodeksie karnym*, „NKPK" 1998, t. XV, pp. 12–14.

vision, the lowest number of rates shall be 10 and the highest shall be 540. In turn, at the stage of determining the amount of a daily rate, the court takes into account the perpetrator's income, their personal, family and earning conditions. Taking into account the above factors affecting the amount of the daily rate, it cannot be lower than PLN 10 or exceed PLN 2,000 (Art. 33 § 3 of the p.c.).

The failure to list the fine among the criminal consequences provided for against the perpetrator of the types under Art. 310 § 1 of the p.c. does not mean a ban on its adjudgment on the basis of a court sentence. The court may impose a fine in addition to the term of imprisonment if the perpetrator committed the act in order to obtain a financial benefit or if they achieved a financial benefit (Art. 33 § 2 of the p.c.).[741] The new Art. 33 § 1a pt 3 of the p.c. will also apply. According to the content of the said provision, not less than 150 daily rates of fine shall be adjudged in the case of an act punishable by imprisonment exceeding 2 years. The application of the above provision cannot be doubted in light of Art. 33 § 2a of the p.c.

In the context of the fine referred to in Art. 33 § 2 of the p.c., we should, to some extent, agree with Łabuda, who states that "rarely, there are situations in which the perpetrator, when committing any of the offences under art. 310, does not act in order to achieve a property benefit or does not achieve such a benefit. The element of action for this purpose, although not included in the descriptions of statutory behaviors under art. 310, almost always accompanies the perpetrators of these acts".[742] In principle, when sharing the opinion of the above-mentioned author, caution should be exercised when assessing whether the perpetrator has actually committed an act motivated by the desire to obtain a financial gain. An *a priori* assumption should be avoided that the acts grouped in Chapter XXXVII of the Penal Code are committed by the perpetrator motivated by motives of a *stricte* economic dimension. However, taking into account the specificity of these offences, recourse to the indicated financial penalty, in the light of the circumstances of individual facts, may be extremely frequent.

What can be considered, in turn, and which is part of the *de lege ferenda*'s postulates, is the introduction of a special provision allowing the imposition of a fine in the amount of 540 daily rates. Such normative constructions do not constitute anything peculiar on the basis of the Polish legal order. They are known, for example, from Chapter XXXIV of the Penal Code (Art. 277b of the p.c.), or from Chapter XXXVI (Art. 309 of the p.c.). As a postulate, it can be indicated that in the event of conviction for the offences specified in Chapter XXXVII, a fine imposed, in addi-

[741] Z. Sienkiewicz, *Rozważania o grzywnie na tle polityczno-kryminalnych założeń kodeksu karnego*, „AUW" 2002, vol. 2342, p. 295.

[742] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit*., p. 1522.

tion to the imprisonment penalty, may be adjudged in the amount of up to 3,000 daily rates.

In the case of offences under Art. 310 § 1 of the p.c., it is not possible to replace the isolation penalties provided for under the statutory threat, with one of the sanctions imposed in conditions of freedom, which are included in Art. 32 items 1 or 2 of the p.c. (Art. 37a § 1 of the p.c.).[743] Under the aforesaid regulation, if offence is punishable only by imprisonment not exceeding 8 years and the sentence imposed for it would not be more severe than one year, the court may instead impose the penalty of limitation of liberty not less than 4 months[744] or a fine not lower than 150 daily rates, if it simultaneously imposes a criminal measure, compensatory measure or forfeiture. This position is justified by the use of a relatively strict criminal sanction framework. The lower limit of its dimension has been set for a period of 5 years of imprisonment, which is a negative premise of the above-mentioned regulation at the stage of the judicial penalty.[745]

Taking into account the abstractly determined specific gravity of offences distinguished under the penal code, the offences defined in Art. 310 § 1 of the p.c. constitute crimes (Art. 7 § 2 of the p.c.). This circumstance determines the consequences for their perpetrators. One of them is, for example, the inadmissibility of applying the institution of a mixed penalty, referred to in Art. 37b of the p.c.[746] In

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743 V. Konarska-Wrzosek, *Ogólne założenia reformy prawa karnego przeprowadzonej ustawą z dnia 13 czerwca 2019 r., i ich normatywna realizacja w części ogólnej Kodeksu karnego wraz z próbą oceny*, [in:] P. Góralski, A. Muszyńska (red.), *Reforma prawa karnego w latach 2015–2019*, Warszawa 2020, pp. 123–125; A. Ziółkowska, *Istota możliwości stosowania wolnościowych kar zamiennych na przykładzie art. 37a k.k., a ustawowy wymiar kary*, [in:] P. Góralski, A. Muszyńska (red.), *op. cit*., p. 212; M. Małecki, *Charakter prawny art. 37a k.k.*, „PS" 2016, vol. 11, p. 121 et seq.; J. Giezek, *O sankcjach alternatywnych oraz możliwości wyboru rodzaju wymierzonej kary*, „Pal." 2015, vol. 7–8, pp. 26–30; P. Kardas, J. Giezek, *Nowa filozofia karania, czyli o założeniach i zasadniczych elementach nowelizacji kodeksu karnego*, „Pal." 2015, vol. 7–8, p. 16; A. Sakowicz, *Modyfikacja ustawowego zagrożenia karą poprzez art. 37a Kodeksu karnego (wybrane zagadnienia)*, „SP KUL" 2015, vol. 3, p. 52.

744 T. Sroka, *Koncepcja jedności kary ograniczenia wolności w nowym modelu tej kary po nowelizacji z 20 lutego 2015 r.*, „Pal." 2015, vol. 7–8, p. 55; A. Ornowska, *Kara ograniczenia wolności w świetle nowelizacji Kodeksu karnego i Kodeksu karnego wykonawczego*, Opole 2013, p. 153 et seq.; idem, *Kara ograniczenia wolności*, Warszawa 2013, p. 156.

745 Even in the event of a different legal limit for the threat of punishment, which would allow the application of Art. 37a § 1 of the p.c. in relation to the acts typified in Art. 310 § 1 of the p.c., the circumstance that would often exclude the said institution is the commission of an act acting in an organized group or association aimed at committing a crime.

746 A. Jezusek, *Sekwencja kary pozbawienia wolności i kary ograniczenia wolności jako reakcja na popełnienie przestępstwa (art. 37b KK)*, „PiP" 2017, vol. 5, pp. 86–89; A. Woźniak, R. Wrzosek, *Kara mieszana (łączona) – kontrowersje wokół zakresu jej stosowania*, „IN" 2017, z 3, pp. 40–42; M. Małecki, *Sekwencja krótkoterminowej kary pozbawienia wolności i kary ograniczenia wolności*

the light of the above provision, in the case of an offence punishable by a custodial sentence, regardless of the lower limit of the statutory threat provided for in the act for a given act, the court may at the same time impose a custodial sentence of no more than 3 months, and if the upper limit of the statutory threat is at least 10 years – 6 months, and limitation of freedom of up to 2 years. This means that there is no premise for a positive application of Art. 37b of the p.c., as this institution applies only to offences, i.e. acts described in Art. 7 § 3 of the p.c.

It is worth emphasizing that in relation to the perpetrators of the types in question, the specific directive on the judicial penalty provided for in Art. 58 § 1 of the p.c. is not applicable.[747] This provision requires the courts to treat imprisonment as the last resort when another sanction or penalty measure cannot meet the objectives of a penalty.[748] This means, on the one hand, that the penalty provided for under the sanction is to constitute an *ultima ratio*. On the other hand, the provision expresses preference and priority in the selection of non-isolating penalties and measures of criminal law response.[749] Thus, the court should resort to the penalty of imprisonment as a last resort, when it becomes convinced that a decision to adjudge a different sanction would not achieve the assumed objectives. This directive is applicable in relation to the types threatened by an alternative sanction or an alternative-cumulative sanction. This means that in order for the possibility of imposing sanctions to be updated, the structure of the provision should provide for the admissibility of a penalty of a freedom-based nature. A different option occurs when the institutions of the judicial penalty allow to replace the isolation penalty with any of the consequences provided for in Art. 32 item 1 or 2 of the p.c. This applies both to the operation of a criminal penalty by a court within the limits of the statutory threat, as well as to cases of its extraordinary dimension.[750] Moreover, the discussed institution applies only to the manifestations of minor and medium offences, classified in the form of misdemeanors (Art. 7 § 2 of the p.c. *a contrario*).

(art. 37b k.k.) – zagadnienia podstawowe, „Pal." 2015, vol. 7–8, pp. 43–46; A. Grześkowiak, *Kara mieszana w polskim prawie karnym*, „SP KUL" 2015, vol. 3, pp. 13–45 et seq.

[747] M. Budyn-Kulik, *Kary i środki karne alternatywne wobec kary pozbawienia wolności*, „SIL" 2011, vol. 16, p. 138; J. Majewski, *O ustawowym zagrożeniu i innych pojęciach związanych z nadzwyczajnym wymiarem kary (w języku kodeksu karnego)*, [in:] J. Majewski (red.), *Nadzwyczajny wymiar kary. Materiały z V Bielańskiego Kolokwium Karnistycznego*, Toruń 2009, pp. 21–24.

[748] J. Giezek, *O sankcjach…*, *op. cit.*, p. 29 et seq.; A. Sakowicz, *Modyfikacja ustawowego zagrożenia karą poprzez art. 37a Kodeksu karnego (wybrane zagadnienia)*, „SP KUL" 2015, vol. 3, pp. 43–61.

[749] J. Lachowski, *Zasady orzekania kary ograniczenia wolności – wybrane zagadnienia*, „NKPK" 2016, t. XL, p. 29.

[750] K. Lipiński, [in:] J. Giezek (red.), *Kodeks karny. Część ogólna…*, *op. cit.*, pp. 529–531; V. Konarska-Wrzosek [in:] T. Kaczmarek (red.), *System…*, *op. cit.*, pp. 293–294; T. Bojarski, [in:] T. Bojarski (red.), *Kodeks…*, *op. cit.*, p. 216; A. Marek, *Kodeks…*, *op. cit.*, p. 193.

The directive referred to in Art. 58 § 1 of the p.c. may be applied to offences punishable by a penalty not exceeding 5 years' imprisonment, which is not the case in the case of a crime.

There are no grounds for the application of a specific directive on the judicial dimension of a penalty allowing for waivers from the imposition of a penalty, with the self-determination of a criminal measure, forfeiture or compensatory measure (Art. 59 of the p.c.). If the offence is punishable by imprisonment of up to 3 years or by a lenient penalty and the social harmfulness of the act is not significant, the court may waive the penalty and stop at adjudging the legal and criminal response measure indicated therein. A prerequisite is that the objectives of the penalty are met. Bearing in mind the strict limits of the threat of sanction, it should be concluded that their framework excludes derogations from the imposition of a penalty within the meaning of Art. 59 of the p.c.

When transferring considerations on penalties and other measures of criminal law response to the ground of their extraordinary dimension, first of all attention should be paid to those institutions that allow for the mitigation of penalization. It should be noted that the "accident indicated in the act" relevant for the conducted considerations, which within the meaning of Art. 60 § 1 of the p.c. allows the application of an extraordinary penalty is an incident of minor significance included in Art. 310 § 3 of the p.c. is the only circumstance characterized on the basis of Chapter XXXVII of the Criminal Code, the occurrence of which can be associated with the penalty outside the framework established by the statutory threat.

One of the circumstances constituting the basis for extraordinary mitigation of the penalty is the perpetrator's failure to reach a certain age limit.[751] This refers to cases when offences under Art. 310 § 1 of the p.c., are perpetrated by a person corresponding to the characteristics under Art. 115 § 10 of the p.c., i.e. being a juvenile. Pursuant to Art. 60 § 1 of the p.c.,[752] the court may apply extraordinary mitigation of the penalty in cases provided for in the act and in relation to a juvenile if the reasons specified in Art. 54 § 1 p.c. do speak for that.[753] Giving particular importance to educational considerations does not deprive the other directives of their normative meaning of the judicial dimension of punishment and does not imply a lenient treatment of juvenile offenders. The degression of criminalization is conditioned by the

[751] The Polish legal system provides for two institutions of criminal degression justified by the age of the perpetrator. All should be classified under Art. 60 § 1 of the p.c. Minority is a case provided for in the Act – Art. 10 § 3 of the p.c. In relation to a minor perpetrator, there is a possibility of degressive punishment, which is motivated by educational reasons (Art. 54 § 1 of the p.c.).

[752] Z. Ćwiąkalski, *Nadzwyczajne złagodzenie kary w praktyce sądowej*, Warszawa 1982, p. 18 et seq.; J. Raglewski, *op. cit.*, pp. 110–124, 146–160.

[753] K. Wiak, *Wychowawczy cel kary orzekanej wobec nieletniego na tle ogólnych dyrektyw wymiaru kary*, [in:] J. Majewski (red.), *Dyrektywy wymiaru kary*, Warszawa 2014, p. 67.

cumulative occurrence of three circumstances. First of all, it must concern a juvenile offender. Secondly, the application of an extraordinary penalty is supported by educational considerations. Thirdly, we should consider even the lowest penalty that can be imposed within the limits of the statutory threat disproportionately severe.

The next basis for the degression of punishment of the perpetrator should be sought in Art. 60 § 2 of the p.c. This provision, by exemplary exemplification, indicates two circumstances, the cumulative finding of which allows to mitigate the penalty below the limits of the statutory threat. The first is the occurrence of a particularly justified accident. Together with it, it must be held by the court that even the lowest penalty provided for a given offence would be disproportionately severe.[754] In the scope of application of this norm, a list of circumstances is indicated, the occurrence of which typically creates the possibility of an extraordinary decision on a penalty or other means of legal and criminal response. The legislator specified: reconciliation of the aggrieved party with the perpetrator, repairing or agreeing on the method of repairing the damage (Art. 60 § 2 item 1 of the p.c.); the attitude of the offender, especially when they made efforts to repair or prevent the occurrence of damage (Art. 60 § 2 item 2 of the p.c.); and when the perpetrator of an unintentional offence or their closest relative has suffered serious damage in connection with the offence committed (Art. 60 § 2 item 3 of the p.c.). Of the three exemplary circumstances distinguished on the basis of Art. 60 § 2 of the p.c., the one from item 3 should be rejected. The premise contained therein does not apply to types under Art. 310 § 1 of the p.c.

Another institution leading to the settlement of a penalty outside the framework of the statutory threat is the so-called "minor crown witness" (Art. 60 § 3 of the p.c.).[755] If the conditions indicated in the content of this provision are met, the court is obliged to decide on a penalty or other punitive measure as part of an extraordinary mitigation. The court may even conditionally suspend the execution of a custodial sentence, the scope of which exceeds the framework set out in Art. 69 § 1 of the p.c. (Art. 60 § 5 of the p.c.). Circumstances determining the mitiga-

[754] Z. Ćwiąkalski, *O niektórych pojęciach związanych z wymiarem kary*, „NP" 1989, vol. 4, p. 44; K. Buchała, *Glosa do wyroku SN z 11 kwietnia 1984 r., sygn. V KRN 178/85*, „PiP", 1986, z. 4, p. 140; W. Wolter, *Jak rozumieć wyrażenie „sąd może zastosować nadzwyczajne złagodzenie kary"*, „PiP" 1977, z. 6, p. 105; idem, *Od nadzwyczajnego złagodzenia kary do niepodlegania karze (studium analityczne)*, „PiP" 1971, z. 3–4, p. 609.

[755] L.K. Paprzycki, *Instytucja świadka koronnego i świadka incognito w świetle Konstytucji RP i Europejskiej konwencji praw człowieka*, „Pal." 2008, vol. 5–6, pp. 22–43; T. Grzegorczyk, *Instytucja tzw. małego świadka koronnego w znowelizowanym prawie karnym skarbowym*, „PS" 2006, p. 3; K. Daszkiewicz, *„Mały świadek koronny" (art. 60 § 3–5 i art. 61 k.k.), cz. I*, „Pal." 1999, vol. 3–4, p. 27; S. Waltoś, *Spór o świadka koronnego w Polsce*, [in:] H.J. Hirsch, P. Hofmański, E.W. Pływaczewski, C. Roxin (red.), *Prawo karne i proces karny wobec nowych form i technik przestępczości. Niemiecko-polskie kolokwium prawa karnego*, Białystok 1997.

tion of penalization include that the perpetrator cooperating with other persons in committing the crime discloses,[756] to the authority appointed to prosecute the offence, information concerning persons involved in committing the offence and the relevant circumstances of its commission. With the cumulative fulfillment of all the conditions indicated in Art. 60 § 3 of the p.c., such regulation related to the mitigation of criminalization, may apply to the perpetrator of offences under Art. 310 § 1 of the p.c.

In addition to the aforementioned possibility of applying the probation measure provided for in Art. 69 § 1 of the p.c., in relation to the "minor crown witness", the possibility of waiving the penalty was also taken into account (Art. 61 § 1 p.c.).[757] This will apply in particular to situations where the role of the perpetrator in the commission of the offence was subordinate and the information provided contributed to preventing the commission of another offence. Such a decision opens the way for the application of the criminal measure referred to in Art. 39 item 7 of the p.c. Pursuant to Art. 43a § 1 of the p.c., withdrawing from the imposition of a penalty, as well as in cases indicated in the Act, the court may award a cash benefit to the Victim Aid Fund and Post-Penitentiary Aid. *In fine*, this provision sets the upper limit of the said criminal measure at up to PLN 60,000. By waiving the imposition of a penalty, the court may also waive the imposition of a criminal measure, payments to the State Treasury and forfeiture, even if such a judgment was mandatory (Art. 61 § 2 of the p.c.).

Compliance with the requirements provided for in Art. 60 § 4 of the p.c. creates the possibility of imposing a penalty or other legal and criminal response measure under the conditions of its extraordinary dimension against the perpetrator of the types specified in Art. 310 § 1 of the p.c., this institution is optional and depends on a free decision of the court. It may apply extraordinary mitigation of the sentence, or even conditionally suspend its execution, against a perpetrator, who, regardless of the explanations submitted in his case, revealed before the law enforcement authority and presented the relevant circumstances, previously unknown to this authority, of the offence threatened with a sentence of more than 5 years' imprisonment. A judgment outside the limits set by the framework of the statutory threat may take place provided that the prosecutor submits an appropriate application. Also in this case, the provisions of regulation under Art. 60 § 5 of the p.c. will apply.

The extraordinary leniency consists in imposing a penalty below the lower limit of the statutory threat or a milder type of penalty, or waiving the penalty and impose

[756] S. Zabłocki, *Przegląd orzecznictwa Sądu Najwyższego – Izba Karna*, „Pal." 2002, vol. 5–6, p. 144.

[757] P. Gensikowski, *Odstąpienie od ukarania tzw. małego świadka koronnego*, „Prok. i Pr." 2011, vol. 2, pp. 25–30.

a criminal measure, compensatory measure or forfeiture. However, the framework thus determined is not unrestricted and has been further narrowed, taking into account the specific gravity of individual prohibited acts. Clarification of the rules for the assessment of the exceptionally mitigated penalty, took place in Art. 60 § 6 items 2–5 of the p.c.[758] and Art. 60 § 7 of the p.c.[759] It should be emphasized that the acts under Art. 310 § 1 of the p.c. correspond to the characteristics of Art. 7 § 2 of the p.c. This statement requires the establishment of rules for extraordinary mitigation on the basis of Art. 60 § 6 item 2 of the p.c. If the act is a crime, the court imposes a custodial sentence not lower than one third of the lower limit of the statutory threat. Attempts should be made to establish a specific framework for deprivation of liberty sentenced outside the limits of its statutory dimension. The use of extraordinary mitigation allows the adjudgment of an isolation penalty ranging from one year and 8 months to 4 years and 11 months.[760]

Pursuant to Art. 38 § 2 of the p.c., an exceptionally aggravated penalty may not exceed 810 daily rates of fine, 2 years of limitation of freedom or 30 years of imprisonment. Since the provisions of Chapter XXXVII of the Penal Code do not provide for separate rules implying the imposition of criminal sanctions, attention should be paid to the regulations contained in the general part.[761]

It is necessary to exclude the possibility of an extraordinary aggravation of a penalty due to committing a type of offence under Art. 310 § 1 of the p.c. in conditions of the hooligan nature of the act. This regulation applies only to offences, the elements of which are in accordance with Art. 115 § 21 of the p.c.[762] The analyzed acts fall into the category of crimes, which closes the discussion on the application of extraordinary punishment on the signalled basis.

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[758] P. Gensikowski, *Odstąpienie od wymierzenia kary w polskim prawie karnym*, Warszawa 2011, pp. 165–167; K. Kmąk, *Czy art. 60 § 6 pkt 4 KK jest przepisem pustym?*, „Prok. i Pr." 2019, vol. 3, p. 29 et seq.; J. Kulesza, *Niektóre problemy stosowania sankcji bezwzględnie oznaczonej*, „Prok. i Pr." 2007, vol. 11, pp. 68–83; W. Mącior, *Nieudany Kodeks karny z 1997 r.*, [in:] L. Leszczyński, E. Skrętowicz, Z. Hołda (red.), *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci Profesora Andrzeja Wąska*, Lublin 2005, p. 268.

[759] Z. Siwik, *Nadzwyczajne złagodzenie przewidzianych jako kumulatywne kar pozbawienia wolości i grzywny*, „NP" 1973, vol. 4, p. 550.

[760] Siwik's statement is based on a misunderstanding with the author indicating that "the extraordinary mitigation of punishment in the event of committing a crime under Art. 310 § 1, threatened with a sentence of at least 25 years' imprisonment, will consist in imposing a sentence of imprisonment of not less than 8 years", see Z. Siwik, [in:] M. Filar (red.), *Kodeks…*, *op. cit.*, p. 1662. The above view should be rejected. The legal basis for determining the penalty in the event of extraordinary mitigation is Art. 60 § 6 item 2 of the p.c.

[761] O. Górniok, *Przestępstwa…*, *op. cit.*, p. 148.

[762] W. Wolter, *Glosa do wyroku z 10.06.1977 r., IV KR 110/77*, „NP" 1978, vol. 7, p. 1219 et seq.

An additional circumstance constituting the basis for the mandatory aggravation of sanctions is included in Art. 57b of p.c. It is the consequence of behaviour under the conditions of a continuous act. Pursuant to Art. 57b of the p.c., in convicting for the offense specified in Art. 12 § 1 of the p.c., the court adjudges a penalty provided for the offence attributed to the perpetrator in the amount above the lower limit of the statutory threat up to twice the upper limit of the statutory limit of threat.[763] In case of fine or the penalty of limitation of liberty, the court adjudges a penalty not lower than twice the lower limit of the statutory threat up to twice the upper limit of the statutory threat. Taking the specificities of crime against the trading of money and securities into account, it is agreed that such regulation may be applicable. There are no obstacles to the counterfeiting of money taking place through several separate behaviours connected by the bond of the legal unity of the act. It is possible to cover the conviction with the legal classification under Art. 64 § 1 of the p.c. The commission of an act in the conditions of ordinary special recidivism may be referred to when the offender convicted of an intentional offence commits an offence similar to the offence for which they have already been convicted within 5 years after serving at least 6 months of the penalty adjudged for the first of the offences.[764] The consequence of finding the above conditions is the possibility of imposing a penalty provided for the assigned crime above the lower limit of the statutory threat with the possibility to adjudge a penalty up to the upper limit of the threat increased by half.

There are no grounds for accepting the responsibility of the perpetrator of the offence under Art. 310 § 1 of the p.c. as committed under the conditions of a special multiple recidivism (Art. 64 § 2 of the p.c.). This provision does not mention the prohibited act in the closed catalogue of behaviours, the finding of which determines its application. The legislator listed only intentional crimes against life or health, the offence of rape, robbery, theft by burglary or other crimes against property committed with the use of violence or the immediate threat of its use.[765] It is worth remembering about narrowing of the boundaries of the aggravation that arises from

[763] Sz. Tarapata, *Wymiar kary za czyn ciągły z art. 12 § 1 k.k. (analiza krytyczna art. 57b k.k.)*, „PiP" 2021, z. 12, p. 29 et seq.; P. Gensikowski, *Wybrane problemy orzekania nawiązki w sprawach o występki chuligańskie*, „WPP" 2010, vol. 1, p. 63.

[764] J. Kosonoga-Zygmunt, *Recydywa jurydyczna w wybranych państwach członkowskich Unii Europejskiej*, Warszawa 2018, p. 77; T. Bojarski, *Problemy regulacji prawnej powrotu do przestępstwa*, [in:] J. Majewski (red.), *Nadzwyczajny wymiar kary. Materiały z V Bielańskiego Kolokwium Karnistycznego*, Toruń 2009, pp. 97–98, 103–104.

[765] A. Sakowicz, *Glosa do wyroku SN z 17.11.2004 r., V KK 321/04*, „PiP" 2006, z. 8, pp. 121–124; J. Majewski, *Glosa do uchwały SN z 26.08.2004 r., I KZP 17/04*, „Pal." 2005, vol. 11–12, pp. 264–269; T. Szymanowski, *Recydywa w Polsce. Zagadnienia prawa karnego, kryminologii i polityki kryminalnej*, Warszawa 2010, p. 190.

Art. 64 § 3 of the p.c. Increasing the upper limit of the statutory threat, which is provided for in Art. 64 § 1 and 2 of the p.c. does not apply to perpetrators of crimes. In the case of offences typified in Art. 310 § 1 of the p.c., the attribution of liability for an act committed under the conditions of ordinary special recidivism implies reaching beyond the limits of the statutory threat. This means imposing a sanction for a period not shorter than 5 years and 1 month and up to 30 years' imprisonment.

When proceeding to the analysis of the next premise of the extraordinary penalty, it is worth noting the words of Górniok, who stated that "profitable nature, in particular of the offenses under art. 310 of the p.c., and their observed executive mechanisms, may relatively often contain premises (making the crime a permanent source of income or committing it in an organized group or in an association aimed at crime) for aggravation on general principles".[766] In sharing the opinion of this author we should reflect on Art. 65 § 1 of the p.c. As for the principles of the penalty that exceed the limits of the statutory threat, the legislator refers to Art. 64 § 2 of the p.c. Issues regarding the penalty, criminal measures and measures related to the trial of the perpetrator, provided for against the perpetrator specified in Art. 64 § 2 of the p.c., also apply to a perpetrator who has made the commission of an offence a permanent source of their income[767] or commits an offence acting in an organized group or association aimed at committing an offence and towards the perpetrator of a terrorist offence.[768] The basic consequence is the obligation to impose a penalty for the found offence above the lower statutory limit of risk and the possibility of its dimension exceeding the upper limit increased by half. Others include, for example, compulsory supervision as part of a conditional suspension of execution of a sentence (see Art. 73 § 1 of the p.c. in connection with Art. 60 § 5 of the p.c.). The possibility of imposing a sanction that is a half higher than the upper limit of the statutory threat provided for in Art. 310 § 1 of the p.c. should be excluded, however, the perpetrator is still subject to an increase in the lower limit of sanction, leading to a criminal consequence for counterfeiting money at a minimum level of 5 years and 1 month.

The issue of the convergence of the foundations of the extraordinary dimension of criminal sanctions is discussed in Art. 57 § 1 of the p.c.[769] If there are several inde-

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[766] O. Górniok, *Przestępstwa…*, *op. cit.*, p. 148.

[767] R. Kokot, *Kilka uwag w kwestii normatywnego wyrazu przestępczości zawodowej w polskim prawie karnym*, „Pal." 2020, vol. 4, p. 76.

[768] Z. Rau, *Przestępczość zorganizowana w Polsce i jej zwalczanie*, Kraków 2002, pp. 39–53, 385.

[769] J. Majewski, *Glosa do uchwały SN z dnia 19 sierpnia 1999 r., I KZP 24/99*, „OSP" 2000, vol. 5, item 73; M. Cieślak, *Zbieg szczególnego złagodzenia ze szczególnym obostrzeniem kary*, „Pal." 1977, vol. 5, pp. 26–29; M. Tarnawski, *Nadzwyczajne złagodzenie kary a nadzwyczajne obostrzenie kary*, „RPEiS" 1976, vol. 2, p. 27; W. Wolter, *Nadzwyczajne złagodzenie kary przestępcom powrotnym*, „PiP" 1970, z. 12, pp. 984–986.

pendent grounds for extraordinary mitigation or aggravation of a penalty, the court may only exceptionally mitigate or aggravate the penalty once, taking into account the converging grounds for mitigation or aggravation in determining the amount of the penalty. The methodology for dealing with the cumulation of institutions implying mitigation and aggravation is determined by Art. 57 § 2 of the p.c.[770] According to this provision, the court applies extraordinary mitigation of punishment or aggravation of punishment, or imposes a punishment within the limits of the statutory threat. Importantly, in cases where the grounds for extraordinary mitigation or aggravation of punishment of an obligatory and optional nature coincide, the court applies the first of the mentioned grounds (Art. 57 § 3 of the p.c.). It is worth noting that Art. 57 § 1–3 of the p.c., insofar as it relates to extraordinary mitigation, applies *mutatis mutandis* to the waiver of punishment (Art. 57 § 4 of the p.c.). If the grounds for extraordinary aggravation of an obligatory nature and the grounds for extraordinary mitigation specified in Art. 60 § 3 of the p.c. coincide, the court shall apply extraordinary mitigation (Art. 57 § 5 of the p.c.). On the other hand, when the grounds for extraordinary aggravation of an obligatory nature and the grounds for extraordinary mitigation specified in Art. 60 § 4 of the p.c. coincide, the court may apply extraordinary mitigation of punishment (Art. 57 § 6 of the p.c.). More detailed issues of the coincidence of the grounds for extraordinary aggravation of punishment are included in the text of Art. 57 § 7 item 1–3 of the p.c.).

The extraordinary penalty against the perpetrator of the offences under Art. 310 § 1 of the p.c. may result from the application of the institution of a series of offences. This is the case when the perpetrator commits two or more offences at short intervals, using the same opportunity, before the first judgment, even if it is not final, is passed on any of them (Art. 91 § 1 of the p.c.).[771] In such a case, the court decides on one penalty specified in the provision constituting the basis for its assessment for each of these offences, up to the upper limit of the statutory threat increased by half. When the perpetrator has been convicted by two or more judgments of conviction for offences belonging to a series of offences, the imposed cumulative penalty may not exceed the upper limit of the statutory threat increased by half, provided for in the provision constituting the basis for the penalty for each of these offences (Art. 91 § 3 of the p.c.).

[770] B.J. Stefańska, *Zbieg nadzwyczajnego złagodzenia i obostrzenia kary*, „Prok. i Pr." 2017, vol. 2, p. 72 et seq.; A. Rybak, *Glosa do uchwały z 19 sierpnia 1999 r., I KZP 24/99*, „PiP", 2000, z. 6, p. 99; idem, *Zbieg podstaw do nadzwyczajnego złagodzenia i obostrzenia kary, czyli rozważania o roli art. 57 § 2 k.k. z 1997 r.*, „Pal." 2000, vol. 5–6, p. 39 et seq.

[771] P. Kardas, *Ciąg przestępstw w świetle nowelizacji kodeksu karnego z 20 lutego 2015 r.*, „Pal." 2015, vol. 7–8, pp. 99–109; idem, *Czyn ciągły i ciąg przestępstw. Komentarz do art. 12 i 91 Kodeksu karnego*, Kraków 1999, pp. 103–116; A. Wąsek, *Glosa do uchwały SN z 11 sierpnia 2000 r., I KZP 17/00*, „OSP" 2001, vol. 1, p. 8.

It is worth paying attention to the circumstances specific to the types under Art. 310 § 1 of the p.c. that affect the judicial penalty. Buchała is right, stating that "the effort to determine penalties adequate to the reprehensibility of the committed act will fall on the shoulders of the court adjudicating in a specific case".[772] On the basis of Chapter XXXVII of the p.c., guidelines have been developed to allow the adjustment of criminal sanctions in each individual case. Among those referred to in the doctrine and jurisprudence, there are those that should be associated with the objective side of the type elements, and those resulting from the psychological attitude of the perpetrator to the act they are accused of, or the motivation that guides them.

Referring to the elements of the objectives side, it is worth pointing out the circumstances related to the nature of the implementation of the executive action. In this context, the scale of action is primarily mentioned. The commission of serious conduct must be regarded as acting to the detriment of the accused.[773] This is especially the case when the crime was so organised that it took on a scale comparable to the industrial one.[774] Differentiation on the basis of the penalty should imply an element of repetition of the criminal efforts of the perpetrator. A person who performs a single, isolated behaviour deserves a different punishment than a person who constantly or successively performs the executive action.[775] The circumstances regarding the object of the executive action also appear to be relevant. Attention is paid to four groups of factors. First, the kind of money that is the object of counterfeiting. The second group consists of the number of counterfeits produced. Under the third, the nominal value of the object of the executive action is indicated. The last factor is the quality of the resulting imitation, and, thus, the possibility of misleading the inexperienced money market user as to the authenticity of money.

With reference to the first circumstance, the perpetrator's conduct towards foreign money, which is widely available and accepted in commercial transactions (euro, dollar), is characterized by a higher degree of criminalization than the analogous act committed against currencies that are little known in the Republic of Poland (Colombian pesos, Kazakh tenge).[776] Referring to the second of the factors, individual behaviours of the perpetrator, regarding a small number of produced copies, deserve a different assessment than the implementation of the causative action, which results in the creation of a significant number of them. In the scope of the third group, the quantum of the criminality of the counterfeiter's behaviour

[772] K. Buchała, [in:] K. Buchała, P. Kardas, J. Majewski, W. Wróbel, *Komentarz…*, *op. cit.*, p. 219.

[773] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *op. cit.*, p. 953.

[774] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część szczególna, t. II…*, *op. cit.*, pp. 1049–1050.

[775] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *op. cit.*, p. 953.

[776] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część szczególna, t. II…*, *op. cit.*, pp. 1049–1050.

is influenced by the nominal/market value of the object of their direct action. A different decision on the penalty should be made in relation to the implementation of behaviour towards money with a high nominal value than in the case of the falsification of low currency denominations. The next factor is the quality of the produced imitation or the nature of the performance of the executive action. It is worth noting the judgment of the Court of Appeal in Kraków, where it was stated that

> the counterfeiting by the accused of a thousand-złoty banknote by the addition of two zeros, intended to give the banknote the characteristics of a hundred thousand-złoty banknote, is a minor, commonplace and easily detectable case. Sentencing the accused for this act, among others, to 3 years' imprisonment is grossly severe, especially after taking into account that she is barely of legal age, lost in life, and gives hopes for improvement, further strengthened by the commitments made by her mother. Therefore, the sentence was mitigated to a year's imprisonment with conditional suspension of its execution.[777]

The statement of the Kraków Court of Appeal is correct, where the ease of detecting the falsehood and recognizing the imitation was considered as the circumstance mitigating the defendant's liability. The above conclusion was made after taking into account the trivial nature of the implementation of the prohibited behaviour. On the other hand, a severe criminal reaction must be taken into account by those who professionally implement the state of elements corresponding to the prohibited conduct.[778] It is worth noting the statement of Ćwiąkalski, who points out the consequences of the perpetrator's act. The author rightly states that the implementation of the offences under Art. 310 § 1 of the p.c., when they do not entail a significant disturbance of economic turnover, should be linked to different quantum of social harm than the one attributed to behaviour that may significantly disturb this turnover.[779]

A separate thread should be made of the circumstances affecting the decision on the criminal sanction resulting from the psychological attitude of the perpetrator to the alleged act, or the motivation that guides them. As indicated, *de lege lata* the directional nature of the subjective side is irrelevant from the point of view of bringing the offender to criminal liability. The circumstance of the subjective side may be reflected at the stage of judicial application of the law. When the performance of the executive action is carried out in order to put the imitation into circulation or to

[777] Judgment of the CA in Kraków of 20 February 1992, ref. II Akr 3/92, LEX nr 27697.

[778] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część szczególna, t. II…*, *op. cit.*, pp. 1049–1050.

[779] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *op. cit.*, p. 953.

use it on a large scale this may be interpreted to the detriment of the perpetrator.[780] Attention is drawn to whether the conduct enacted constitutes an accomplishment of an *ad hoc* objective or is far from an occasional, transitory intent.[781]

It is also justified to draw attention to such circumstances, which are excluded from the group of relevant at the stage of judicial decision on sanctions. What should be highlighted here is the avoidance to interpret the counterfeiting of object covered by particular protection or enjoying exceptional trust of users, as acting to the detriment of the perpetrator. The importance of money in public and private economic transactions is not taken into account. These facts, as *differentia specifica*, have already been taken into account by the legislator, both at the typing stage and from the point of view of the general-abstract boundaries of the threat of sanction.[782]

It is worth signaling the inclusion in the text of the law of the circumstances that, in light of the new wording of Art. 53 § 1 of the p.c., the court is obliged to take into account when valuing the behavior of the offender. They are divided into either aggravating (Art. 53 § 2a of the p.c.) or mitigating (Art. 53 § 2b of the p.c.), with only an exemplary list of them. Both categories can find expression in the legal evaluation of the behavior of the perpetrator of the type under Art. 310 § 1 of the p.c. According to Art. 53 § 2a of the p.c., among the former, include: previous criminal record for an intentional crime or a similar unintentional crime (item 1); taking advantage of the victim's helplessness, disability, illness or old age (item 2); a course of action leading to humiliation or torment of the victim (item 3); committing a premeditated crime (item 4); committing a crime as a result of motivation deserving special condemnation (item 5); committing a crime motivated by hatred because of the victim's national, ethnic, racial, political or religious affiliation, or because of the victim's irreligiousness (item 6); acting with particular cruelty (item 7); committing a crime while under the influence of alcohol or an intoxicant, if this condition was a factor leading to the commission of the crime or significantly increasing its effects (item 8); committing a crime in cooperation with a minor or taking advantage of the minor's participation (item 9). On the other hand, mitigating factors for the perpetrator's responsibility under Art. 53 § 2b of the p.c. include: committing the crime as a result of a motivation deserving consideration (item 1); committing the crime under the influence of anger, fear or agitation, justified by the circumstances of the incident (item 2); committing the crime in response to an emergency situation, the correct assessment of which was significantly impeded by the personal

[780] M. Błaszczyk, [in:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny. Część szczególna, t. II…*, *op. cit.*, pp. 1049–1050.

[781] Z. Ćwiąkalski, [in:] W. Wróbel, A. Zoll (red.), *op. cit.*, p. 953.

[782] J. Skorupka, [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks…*, *op. cit.*, p. 1601; Resolution of the SC of 30 September 1998 ref. I KZP 3/98, OSNKW 1998, vol. 9–10, item 41.

circumstances, extent of knowledge or life experience of the perpetrator (item 3); taking measures to prevent or limit the harm or damage resulting from the crime (item 4); reconciliation with the victim (item 5); reparation for the harm caused by the crime or compensation for the harm resulting from the crime (item 6); committing the crime with a significant contribution from the victim (item 7); voluntarily disclosing the crime he committed to an authority established for the prosecution of crimes (item 8). It should be emphasized that the circumstance referred to in Art. 53 § 2a and § 2b of the p.c. does not constitute a circumstance that is a hallmark of the type that the perpetrator committed, unless it occurred with particularly high intensity. In turn, according to Art. 53 § 2d of the p.c., does not constitute an aggravating circumstance, that which is not a hallmark of the crime, if it is the basis for the aggravation of criminal responsibility applied to the offender. An analogous solution is provided with respect to mitigating circumstances under Art. 53 § 2e of the p.c.

3. Summary

When considering the system of criminal sanctions provided for by Polish legislation against the perpetrators of the title crimes, it is also worth paying attention to the legal comparative threads. Their inclusion allows, on the one hand, to look at domestic solutions from a certain distance, and on the other hand, opens the way to formulate reasonable *de lege ferenda* postulates.

First of all, it is worth noting the relatively large stratification of the limits of the statutory threat of punishment, which is provided for on the European continent against the perpetrators of counterfeiting of money and/or its surrogates. The analysis of individual cases will allow to verify the adequacy and intensity of the criminal response of the Polish legislator against other countries. However, without wanting to anticipate the further course of considerations, it can be indicated at this point that Polish solutions are characterized by a significant degree of penalization. Taking into account the examined legal orders, without the risk of making a mistake, one can be tempted to state that occasionally the legislator decides to apply the imprisonment penalty in the short term. This is justified, on the one hand, by the essence of money and other tenders for the proper functioning of economic and consumer trade, and, on the other hand, by the gravity of the legal good in its economic, social and political dimension.

In view of the above, it should be noted that only two states provide for the threat of imprisonment for up to 3 years (Norway, Estonia). The limits of the isolation penalty of up to 5 years are foreseen in Sweden, Finland, Lithuania, Andorra and Moldova. Importantly, the same threat of punishment is also provided for in Switzerland, but only in terms of the types of money altering. In Russia, there is a penalty of

up to 6 years' imprisonment when the counterfeiting involves other tenders. Much more often, in the case of counterfeit money or its surrogate, European legislators opt for the use of imprisonment of up to 8 years (Ukraine, Belarus, the Czech Republic, Hungary, Russia, Latvia and Slovenia). It is worth noting that a similar threat of sanctions is also provided for in Cyprus – in relation to the counterfeiting of foreign money. On the European continent, it is noticeable that in the case of the types of prohibited acts analysed here, the application of an isolation penalty of no more than 10 years' imprisonment seems to be dominant. Such a sanction is provided for in the legislation of the Netherlands, Malta, Slovakia, San Marino, Austria, Liechtenstein, Croatia, Bosnia and Herzegovina, Brčko District, Kosovo, Romania, North Macedonia and Greece. Interestingly, the same threat of punishment is also provided for under the penal codes of Belgium and Luxembourg, but in both cases it concerns the altering of money or its surrogate. In turn, eight European countries provide for imprisonment for a period not exceeding 12 years as part of the statutory threat. We are talking about Italy, Spain, Portugal, Denmark, Iceland, Serbia, Montenegro and Turkey.

It is worth noting that in the case of five countries, it is possible to observe the formation of a criminal penalty for counterfeiting money or its surrogate at a level not exceeding 15 years' imprisonment (Germany, Bulgaria and Albania). The above list should be supplemented with countries such as Belgium and Luxembourg, where this sanction is provided for in relation to criminal counterfeiting of the object of the executive action. A sanction exceeding 15 years' imprisonment, is exceptional and is rarely applied by European legislators. Currently, it can be observed in France and Monaco. Moreover, in the case of counterfeiting of the national currency, a penalty of 15 years' imprisonment is also applied in Cyprus.[783]

The above argument should be supplemented by several issues related to the determination, by the countries of the European continent, of the lower limit of the statutory threat of punishment for the counterfeiting of money or its surrogate. As indicated by statistical analyses concerning Polish jurisprudence, the decisions taken in recent years most often oscillate within this limit of sanctions or even outside it – thanks to the use of the institution of a minor case.[784] From this point of view, observations of a comparative legal nature related to the determination of the lower limit of punishment may prove invaluable in verifying the use of adequate criminal repression. In

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[783] M. Błotnicki, *Considerations devoted to the Polish solution of statutory threat of punishment for counterfeiting money or its surrogate and crimes related to such counterfeiting against the background of European solutions – de lege lata remarks and pustulates de lege ferenda*, "Juridical Tribune" 2022, vol. 12(4), pp. 524–527.

[784] G. Łabuda, [in:] J. Giezek (red.), *Kodeks…*, *op. cit*., p. 1521.

view of the above, attention should be focused on those cases where the minimum threshold for an isolated criminal sanction has been set relatively strictly.

In the first place, attention should be paid to the group of countries that treat a penalty of not less than 3 years' imprisonment as the starting point. These include the Czech Republic, Italy, Andorra and Portugal. In addition, Ukraine can be included in this group when talking about the type of counterfeiting money. In turn, not less than 4 years' imprisonment is a sanction provided for under the San Marino legislation. An isolation sanction of not less than 5 years applies in Albania, Belgium and Luxembourg. The last two countries also sanction, to the extent indicated, the criminal altering of money or other means of payment.

It is worth noting that European legislation is not unfamiliar with the stricter definition of the lower limit of criminal sanctions than previously discussed. For example, Slovakia provides for imprisonment for a period not shorter than 7 years for committing money counterfeiting. In Spain, these types of offences are penalized by threat of imprisonment for 8 years. In turn, 10 years' imprisonment – as the lower limit of the statutory threat – is the sanction provided for under the legislations of Monaco, Belgium and Luxembourg. The latter two states cover counterfeiting money or its surrogate with the said penalty.

Interestingly, there are also countries that regulate the upper limit of the statutory threat of sanctions for the type of counterfeiting money or other tenders in a manner that is similar to the Polish regulation. This remark applies in particular after modifying the limits of the penalty of imprisonment included in Art. 32 item 3 of the p.c. (Art. 37 of the p.c.). These include Monaco (up to 20 years' imprisonment) and France (up to 30 years' imprisonment). As previously indicated, only one state – apart from the Republic of Poland – clearly distinguishes the removal of the sign of redemption as part of the executive action. This country is Slovenia. If the offence in question is committed, it is punishable by a fine or imprisonment of up to one year.

The above remarks allow us to state that *de lege lata* the threat of imprisonment of 5 or 25 years provided for under the domestic criminal law should be considered extremely severe against the background of the legal systems of the countries of the European continent. This remark concerns both the lower limit of the statutory threat and the maximum provided for under the criminal sanction. Suffice it to say that only two states envisage sanction limits that are similar to those of the Republic of Poland, taking into account the upper limit of the statutory threat (Monaco, France). In turn, the determination by the Polish legislator of the lower limit of sanctions at the level of 5 years appears to be a manifestation of excessively punitive character of the legal system. This is justified by the fact that only four countries of the "old continent" have more severely set this limit of punishment. In view of the above, *de lege ferenda*, it is necessary to postulate a modification of the framework of criminal sanctions for offences typified in Art. 310 § 1 of the p.c. It seems that

lowering the lower limit of the statutory threat will be an appropriate and justified procedure from the point of view of both the objectives and functions of the penalty, as well as the practice of applying the law. Therefore, the prohibited acts in question should be punishable by imprisonment for 3 years. Not only will the indicated limits of sanctions pursue the objectives and functions envisaged, but they will also comply with the requirements for harmonisation of the minimum criminal sanction expected by the EU legislature in the context of criminal law protection of money and legal tenders.[785]

785 M. Błotnicki, *Considerations…*, *op. cit.*, pp. 532–533.

Conclusions

The conducted analysis proved that the criminal law protection of money and its surrogates is comprehensive and essentially complete on the European continent. The Polish solution, although it is neither characterized by its innovation nor its originality, perfectly fits into the current models. It is rare that the legislator decides to apply a narrow approach, limiting it only to the protection of money. In addition, research has demonstrated that the dominant model in Europe is to criminalize the widest possible range of counterfeiting behaviours. Hence, in a large part of the states, there is liability under penalty of punishment for the types of counterfeiting, circulation and acts related to fencing of an imitation of money or its surrogate. In addition, there is a noticeable tendency to criminalize behaviour in the foreground of a prohibited act in the form of preparatory activities or *sui generis* preparation.

Against this background, it is easy to see that the responsibility for counterfeiting, altering or removing the sign of redemption from money or a monetary token established as a legal tender, but not put into circulation, is only a fragment of possible attacks on the normative foundations of the financial system of the state. The above-mentioned optics for the value protected by the value typing rule are not uniform in Europe. There are also references to public faith, public order, public good, economic turnover or monetary turnover, the grounds for which are to be violated by the act of the perpetrator. The above diversity does not change the fact that, by typifying the counterfeiting of money, the legislator, in principle, protects the value of a general, supra-individual nature. The conducted reasoning demonstrated the possibility of such an interpretation of the type pursuant to Art. 310 § 1 of the p.c., which allows to establish the relationship of harm. The counterfeiting of money or its surrogate may lead to jeopardisation or impairment of the individual property or non-property interest of a participant in the financial system. The argument referring to the generic object of protection does not constitute, in this context, a sufficient reason in favour of a different conclusion.

Next, it should be noted that the Polish legislator has adopted the widest possible model of criminal liability for counterfeiting money. In this place it is worth briefly

noting that this procedure meets the standards resulting from the Geneva Convention, as well as European Union law based on the unification of the minimum characteristics of crimes and the approximation of criminal law sanctions.[786] The criminalisation covers three variants of the executive action, i.e. counterfeiting, alteration or removal of the sign of redemption from the legal good carrier. The specificity of the domestic solution is based on distinguishing, among the classic counterfeiting behaviors, the action of removing the sign of redemption. Such a procedure was found only on the basis of the Slovenian legal order. In other countries, a more synthetic formula was applied, indicating only counterfeiting or alteration. On the basis of an act prohibited under Art. 310 § 1 of the p.c., it was assumed that counterfeiting means the creation of an object resembling money or a monetary token in such a way that it may be considered an original. In this way, the perpetrator gives a certain object a seemingly authentic value. Altering is understood as the making of any change in the original money which creates the appearance of its authenticity. Such an approach allows to assess the compliance of the perpetrator's behaviour with the statutory pattern, while detaching from the nature of the introduced modification. In turn, the removal of the sign of redemption from money or a monetary token leads to the restoration of its economic significance that it had before its cancellation and takes place by any factual or legal act that gives the imitation an appearance of authenticity. Each of the behaviours included in the content of the discussed provision constitutes a separate and equivalent variation of the executive action. Moreover, in the model approach, all of them are characterized by an equal degree of criminalization, and if they are committed, there should be no difference on the basis of the statutory threat of a criminal penalty. In addition the means used and the chosen method of action remain irrelevant from the point of view of attribution of criminal liability for the implementation of the causative action.

The analysis confirmed that the quality of imitation is an important issue from the point of view of criminal liability for counterfeiting money and its scope. The reduction and verification models that are functioning and are preferred in judicial jurisprudence were analyzed. The distinguished schemes in the main part are based on the construction of personal patterns referring to the user of money having a specific set of features (model pattern). This takes the form of an experienced, average-experienced and inexperienced participant in the financial system in the field of dealing with money. It is worth emphasizing that in the doctrine of criminal law and jurisprudence, the approach to the inexperienced user of money as a comparative entity dominates. This leads to the conclusion that we are dealing with the set of type elements under Art. 310 § 1 of the p.c., when the degree of similarity of

[786] The International Convention for the Suppression of Counterfeiting Currency and its Protocol, agreed on 20 April 1929 in Geneva (Journal of Laws of 1934. No. 102, item 919).

the counterfeit is sufficient to mislead an inexperienced person as to its authenticity. Importantly, the Polish legislator's reliance on models of personal patterns to determine the level of mapping relevant for the commission does not constitute any *novum* in continental Europe. Analogous schemes operate and are applied in the states of the Germanic legal system.

In the course of the argument, the subject of the executive action of the prohibited act was analyzed. It is the Polish or foreign money or a monetary token. Research has revealed that although money is a well-known legal institution, there are still significant discrepancies in its definition. In connection with the above, the verification of the views of representatives of the criminal law doctrine was preceded by the exposure of the fact that the object of the executive action under criminal law is understood in an autonomous way, determined by the needs of criminal law. This led to the conclusion that money within the meaning of Art. 310 § 1 of the p.c. should be understood as qualified monetary tokens of the Republic of Poland, in the form of banknotes and coins denominated in złoty and grosz, which, being a legal tender in circulation, were issued by a competent constitutional body of the state, i.e. the National Bank of Poland with the assigned compulsory power to redeem monetary liabilities correlated with the universal obligation to accept it. Thus, monetary tokens that were withdrawn from circulation, yet still subject to exchange, were excluded from the group of designations. This is due to the fact that an indispensable element of money is its circular nature. Only an attack on a means involved in trade can create a danger to the legally protected good. However, it is worth noting that the narrow approach that functions in Poland is not the sole model found in continental Europe. There are countries that cover non-circulating monetary tokens with criminalization. Moreover, money is not numismatics, bank money, electronic money and virtual currency. The object of the executive action of the act under Art. 310 § 1 of the p.c. may not include fictitious money, although the conducted research demonstrated that the lack of criminalization in this field is subject to exceptions in Europe. In addition, we proved that the type of money counterfeiting has a material character in all forms of prohibited behaviour. A legally relevant effect should be understood as a created or modified object constituting an imitation of money or a monetary token. It was also confirmed that the Polish legislator uses the model of uniform protection of money, regardless of the country of its issue, the issuer's domicile or the principle of reciprocity.

The review of the positions of the representatives of the doctrine showed that the title prohibited act is essentially universal in nature. Due to the fact that Art. 310 § 1 of the p.c. regulates an effectual crime, its individual nature is revealed in the event of committing the act by omission. The recognition of this circumstance allowed to expose interesting threads on the grounds of criminal prosecution in the case of criminal cooperation of an *intraneus* with an *extraneus* in a crime committed by

omission. From the point of view of the character of the subjective side, the analysis carried out allowed to conclude that the act can be committed only intentionally, with an immediate intention, not limited to the form of *dolus directus coloratus*.

The legal and criminal response measures that can be adjudged against the perpetrator of the types were also analysed. The use of a comparative legal approach demonstrated that the Polish solution, in terms of the limits of imprisonment provided for under Art. 310 § 1 of the p.c. appears to be strict against the background of other European countries. It is worth noting that two countries provide a similar framework for the threat of sanctions. In turn, only four have stricter limits of liability. It should be emphasized that the determination of a penalty at the level of not less than 5 years or a penalty of 25 years' imprisonment is strict not only against the background of other countries, but above all taking into account national regulations (Art. 37 of the p.c.).

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The publication is essentially dogmatic in nature. The author's advantage is the departure from theses and research hypotheses in this type of work. It is good that the author did not follow the recently observed fashion and manner of including theses and hypotheses in dogmatic and legal works without a real methodological need and – worse still – without justification and premises. In such situations, it is a triumph of form over content, which is supposed to convince and confirm the scientific value of a given publication, but in fact it raises surprise and embarrassment. Young authors do not seem to notice that the methodology of empirical research in criminology is not the same as the scientific workshop of a criminal law dogmatist. The author of the reviewed publication did not succumb to this trend and this should be praised.

From the review by Prof. Leszek Wilk

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